

1 UNITED STATES DISTRICT COURT  
 2 WESTERN DISTRICT OF WASHINGTON  
 3 AT TACOMA

4 UNITED STATES OF AMERICA,	)	Docket No. CR05-5828FDB
5 Plaintiff,	)	Tacoma, Washington
6 vs.	)	February 28, 2008
7 BRIANA WATERS,	)	VOLUME 13
8 Defendant.	)	

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 11 TRANSCRIPT OF PROCEEDINGS  
 12 BEFORE THE HONORABLE FRANKLIN D. BURGESS  
 SENIOR UNITED STATES DISTRICT COURT JUDGE, and a jury.

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25 Proceedings recorded by mechanical stenography, transcript  
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1 THURSDAY, FEBRUARY 27, 2008 - 8:45 A.M.

2 \* \* \*

3 (Jury not present.)

4 THE CLERK: This is in the matter of United States of  
5 America versus Briana Waters, cause CR05-5828 FDB.

6 Counsel, please make an appearance for the record.

7 MR. FRIEDMAN: Good morning, Your Honor, Andrew  
8 Friedman for the United States.

9 MR. FOX: Good morning, Your Honor Neil Fox present  
10 with Ms. Waters. Mr. Bloom, I believe, is practicing in front  
11 of the mirror.

12 THE COURT: What I want to do is go through these  
13 instructions with you.

14 How I want to do it is in this fashion. The ones I gave  
15 you as to the Court's proposed instruction, go through them  
16 one-by-one, to see if there's any issue with it. If there's  
17 an issue or comment you want to make about the instructions,  
18 that you succinctly make those and I will take them into  
19 consideration.

20 Then from that process, I will issue a new set. And that  
21 new set will be the instruction I am going to give to the  
22 jury.

23 After we've gone through the set I gave you last night,  
24 then I will ask you about your particular proposed  
25 instructions as to what you think should be added to this.

1 MR. FOX: Okay.

2 THE COURT: I will consider that as I go about the  
3 new set.

4 MR. FOX: Okay.

5 THE COURT: All right. Now, with the set I gave you  
6 last night, dealing with Instruction No. 1, Mr. Friedman, any  
7 issue with that instruction?

8 MR. FRIEDMAN: No, Your Honor.

9 THE COURT: Mr. Fox?

10 MR. FOX: No, Your Honor.

11 THE COURT: No. 2 talks about the indictment is not  
12 evidence. Any issue with that?

13 MR. FRIEDMAN: Not from the government, Your Honor.

14 MR. FOX: No, Your Honor.

15 THE COURT: No. 3 deals with proof beyond a  
16 reasonable doubt and tells the jury what that is. Any issue  
17 with that?

18 MR. FRIEDMAN: No, Your Honor.

19 MR. FOX: No, Your Honor.

20 THE COURT: No. 4 tells the jury what evidence is in  
21 deciding what the facts are, any issue with that one?

22 MR. FRIEDMAN: Not from the government.

23 MR. FOX: No, Your Honor.

24 THE COURT: No. 4(b) talks about character evidence  
25 and how to consider that. Any issue with that one?

1 MR. FRIEDMAN: No, Your Honor.

2 MR. FOX: No, Your Honor.

3 THE COURT: No. 5 says the defendant has testified  
4 and how to treat that. Any issue with that one?

5 MR. FRIEDMAN: Not from the government.

6 MR. FOX: We do Your Honor. I know this is a pattern  
7 instruction from the Ninth Circuit, but I think there's no  
8 reason to highlight her testimony. It's particularly picking  
9 out her testimony and telling the jury she's testified. They  
10 know she's testified. I don't see any need for this  
11 instruction.

12 THE COURT: You are recommending it be deleted?

13 MR. FOX: Yes. I don't have strong objections. I  
14 don't see the need for it.

15 THE COURT: That is your comment.

16 MR. FOX: Yes.

17 THE COURT: All right.

18 MR. FRIEDMAN: From the government we would ask that  
19 it be included, remain in.

20 THE COURT: No. 6 talks about certain things are not  
21 evidence. Any issue with that one Mr. Friedman?

22 MR. FRIEDMAN: The only thing is the second sentence  
23 of paragraph 3. I don't believe any evidence came in for a  
24 limited purpose, so I think in this case, it might make sense  
25 to delete that sentence.

1 THE COURT: Mr. Fox.

2 MR. FOX: I don't have an objection to Mr. Friedman's  
3 suggestion.

4 THE COURT: All right.

5 MR. FOX: Although I guess in the interest of  
6 caution, it can't hurt. If at some place in the course of the  
7 trial you do that, maybe we should keep it in.

8 THE COURT: I don't know, let me look at that. I  
9 understand what you are saying.

10 No. 7?

11 MR. FRIEDMAN: No objections.

12 THE COURT: Types of evidence, circumstantial or  
13 direct. Any issue with that instruction?

14 MR. FRIEDMAN: Not from the government.

15 MR. FOX: No, Your Honor.

16 THE COURT: All right, No. 8, talking about  
17 credibility of witnesses, any issue with that?

18 MR. FRIEDMAN: No, Your Honor.

19 MR. FOX: No problem Your Honor.

20 THE COURT: All right. No. 9 is talking about expert  
21 testimony. Any issue with that one?

22 MR. FRIEDMAN: No, Your Honor.

23 MR. FOX: No.

24 THE COURT: No. 10 is telling the jury that they are  
25 only to determine guilt or innocence as to the charges in the

1 indictment. Any issue with that one? Mr. Friedman.

2 MR. FRIEDMAN: No, Your Honor.

3 MR. FOX: No, Your Honor.

4 THE COURT: No. 11 talks about a separate crime being  
5 charged in each count and how they are to consider those  
6 counts. Any issue with that one?

7 MR. FRIEDMAN: No, Your Honor.

8 MR. FOX: No.

9 THE COURT: No. 12 deals with possession. Any issue  
10 with that?

11 MR. FRIEDMAN: No, Your Honor.

12 MR. FOX: No.

13 THE COURT: No. 13 deals with the plea agreements,  
14 that evidence and how they are to view that testimony coming  
15 from folks that have pleaded guilty to crimes. Any issue with  
16 that one?

17 MR. FRIEDMAN: No, Your Honor.

18 MR. FOX: I do, Your Honor, have a problem with this  
19 instruction. It deals with what's in my proposed instructions  
20 on this subject. This instruction doesn't have any language  
21 about that these people are alleged accomplices and you should  
22 view their testimony with caution.

23 THE COURT: Does it not say that in the last sentence  
24 there?

25 MR. FOX: Right, but the pattern instruction, 4.9 in

1 the Ninth Circuit, has other categories, which I have proposed  
2 that these people not just have taken plea agreements, but  
3 that they are alleged accomplices. So it's not just that they  
4 pled guilty and in exchange for a lesser sentence they are  
5 testifying; and you should view their testimony with caution.  
6 But they're alleged accomplices, and alleged accomplices  
7 should have a cautionary instruction attached to it.

8 Similarly, they both have felony convictions. The fact  
9 that they have felony convictions in and of itself is an  
10 additional reason why their testimony should be evaluated  
11 differently, so my proposals, and I think these were my  
12 supplemental instructions two days ago, has the additional  
13 language in the pattern instruction. The Court just focused  
14 on the fact they had plea bargains.

15 THE COURT: Are you referring to a pattern  
16 instruction?

17 MR. FOX: Yes, 4.9.

18 THE COURT: Okay.

19 MR. FOX: There's sections both that they pled guilty  
20 to the crime arising out of the same event, but also the  
21 person was alleged to be an accomplice to the crime charged  
22 and also they received favored treatment from the government.

23 So my proposals improve on what you already have.

24 THE COURT: What is your number?

25 MR. FOX: The supplemental instructions I filed two



1 days ago.

2 THE COURT: Is there a number on it?

3 MR. FOX: I think they are proposed instructions 22  
4 and 24. These were in the supplemental packet.

5 THE COURT: They have the No. 22 and 24 on them?

6 MR. FOX: Yes.

7 THE COURT: Mr. Friedman, any comment.

8 MR. FRIEDMAN: Yes, I think the instruction as given  
9 here is correct and how it should be. It fully describes  
10 everything that's happened in this case. The pattern  
11 instruction has all kinds of different alternatives but what  
12 Mr. Fox is really asking for is sentence after sentence of bad  
13 information about these people. The fact that they pled  
14 guilty to charges arising out of the same events, that covers  
15 the fact that they have a felony conviction and that they are  
16 accomplices, so this fully describes what happens and I think  
17 it's appropriate.

18 THE COURT: Does it not say on line 5 they pleaded  
19 guilty to crimes arising out of the same events for which the  
20 defendant is on trial?

21 MR. FOX: But the pattern has words specifically  
22 about accomplice.

23 THE COURT: You want the word accomplice?

24 MR. FOX: Yes, following 4.9.

25 MR. FRIEDMAN: I would say that would apply to an

1 accomplice who has not pleaded guilty, it would be appropriate  
2 in that case, not in this case where they have pleaded guilty  
3 to exactly the same thing.

4 MR. FOX: I would ask that the Court give the one I  
5 proposed.

6 THE COURT: I understand that. That's why you are  
7 saying it should be changed and that's why you are saying it  
8 should cover all these other folks that pled guilty and doing  
9 the same thing.

10 MR. FRIEDMAN: I am saying it covered everything and  
11 it's as good as it is.

12 THE COURT: That is what you are saying.

13 Now 14 talks about charts and summaries have been received  
14 into evidence. Any issue with that?

15 MR. FRIEDMAN: I think none were admitted in  
16 evidence. I think they were actually only demonstrative so I  
17 think we should give pattern 4.18 instead of this one, which I  
18 believe is 4.19.

19 MR. FOX: I agree with Mr. Friedman, I don't believe  
20 that the charts are going back to the jury. I think they were  
21 offered for illustrative purposes only.

22 THE COURT: All right, rather than receive -- short  
23 of being admitted into evidence, is what you are saying?

24 MR. FRIEDMAN: Correct.

25 THE COURT: Okay.

1 MR. FOX: Right, 4.18.

2 THE COURT: You are both in agreement on that one, it  
3 sounds.

4 MR. FOX: Yes. "That have been shown to you" is the  
5 wordi ng.

6 THE COURT: Right.

7 All right, No. 15 talks about "on or about" defi ni ti on,  
8 what that means. Any i ssue with that?

9 MR. FRIEDMAN: No, Your Honor.

10 THE COURT: Mr. Fox.

11 MR. FOX: No, Your Honor.

12 THE COURT: No. 16 is dealing with Count 1, which is  
13 the conspi racy count. Any i ssue with that one?

14 MR. FRIEDMAN: Not from the government.

15 MR. FOX: Well, Your Honor, I guess with all of the  
16 to-convict i nstructions, the problem I have, including with  
17 this one, is that we haven't read the indictment to the jury.  
18 The government had a proposed instruction, their Instruction  
19 No. 1, which you did not include in the packet, which sets out  
20 what the charges are with some speci fi ci ty.

21 The problem with Instruction No. 16, without the  
22 indictment and without the Government's proposed No. 1, is  
23 that it doesn't tell the jury what some of the facts are that  
24 are alleged to have occurred.

25 So I guess generally I think we need to give more

1 information to the jury about what the specific charges are in  
2 this particular case.

3 Does that make some sense?

4 THE COURT: It's not making a whole lot in light of  
5 the fact that each count is set forth.

6 MR. FOX: If you look at Government's proposed  
7 Instruction No. 1, they have set out in some detail, what each  
8 of the counts involve. I would ask that their Instruction  
9 No. 1 be given so it explains a little more to the jury as to  
10 what actually was alleged in the indictment.

11 Right now the jury doesn't really have much sense of what  
12 was in the indictment.

13 The other problem is that we believe that Instruction No.  
14 16, the conspiracy instruction, needs to name the people who  
15 were named in the indictment as the alleged coconspirators.  
16 It needs to set out what the objects of the alleged conspiracy  
17 were, and then finally, the jurors need to be instructed that  
18 they need to be unanimous about who the conspirators were and  
19 what the objects of the conspiracy were.

20 I propose instructions that set that out.

21 THE COURT: I read it, yes.

22 MR. FOX: I think this is the problem with this  
23 instruction, it doesn't specifically tell the jurors they have  
24 to be unanimous as to what the object of the conspiracy was.

25 THE COURT: You are saying your instruction should be

1 the instruction here, is what you are saying.

2 MR. FOX: I propose some specific instructions on  
3 conspiracy, which I believe should be given, and my problem  
4 with this instruction, is that it doesn't go far enough in  
5 telling the jurors they have to be unanimous both as to --

6 THE COURT: You would agree it's a pattern  
7 instruction.

8 MR. FOX: I am sorry.

9 THE COURT: You would agree it's a pattern  
10 instruction.

11 MR. FOX: It is. There are other pattern  
12 instructions that -- there are other instructions that the  
13 Court can give about unanimity and I think the case law says  
14 in complicated cases, the Court can do that and I am asking  
15 the Court to do that.

16 THE COURT: All right. Mr. Friedman.

17 MR. FRIEDMAN: We are preparing and will have a  
18 pattern verdict form that would require the jury to be  
19 unanimous on the object of the conspiracy, which crime. So I  
20 think that takes care of that. Beyond that I think this is an  
21 appropriate pattern instruction.

22 THE COURT: You wouldn't suggest, Mr. Fox, that the  
23 jury by now would know what this case is about?

24 MR. FOX: I guess, Your Honor, I am not sure, because  
25 the government introduced a lot of evidence as to other

1 arsons, and they have never offered any evidence as to who  
2 committed those arsons. There are communiques that were  
3 issued, but some of the early cases that Agent Comery  
4 testified to, they have heard no testimony as to who committed  
5 those.

6 Boise Cascade, there were these arsons that took place,  
7 and the jurors have never been told who committed them.

8 Ms. Philabaum and Kolar talked about a few of them.

9 I think there is -- this is a conspiracy charge and I  
10 think we need to narrow in what the conspiracy is and what the  
11 objects were so the jurors aren't left speculating about that  
12 or disagree among themselves.

13 THE COURT: I understand your position. Anything  
14 else to be said?

15 MR. FRIEDMAN: The only thing I would say we don't  
16 have an objection if the Court wants to give our proposed No.  
17 1. I don't think it's necessary, but we don't object.

18 THE COURT: Government's No. 1.

19 All right, No. 17, it's also dealing with to decide  
20 whether there's a conspiracy is going into what they are to  
21 do.

22 MR. FRIEDMAN: No objection from the government.

23 MR. FOX: Two problems, again, without the jurors  
24 knowing exactly what the conspiracy charge in the indictment  
25 is, this doesn't make a whole lot of sense. It goes to our

1 previous motion, which I know the Court has ruled on, that  
2 there are multiple conspiracies in this case.

3 THE COURT: Right.

4 MR. FOX: So I believe that this instruction needs to  
5 be more specific in that regard.

6 I also would ask that the Court include our proposed  
7 language in this instruction from our Instruction No. 11. "If  
8 you find a conspiracy beyond a reasonable doubt, or if you  
9 find beyond a reasonable doubt the defendant was not a member  
10 of the charged conspiracy." I have included the "beyond the  
11 reasonable doubt" in our proposed language that is not in  
12 here, so it's just repeating the reasonable doubt.

13 THE COURT: All right. Anything else to be added to  
14 this?

15 MR. FRIEDMAN: I think this is an appropriate pattern  
16 instruction and we don't want the burden of proof in every  
17 instruction.

18 THE COURT: Of course, Mr. Fox, you understand we are  
19 going through and you know this anyway, that the instructions  
20 will be read as a whole, not as pick out one and say this is  
21 the one that controls.

22 Okay, No. 18 talks about a timeframe, if you will, as to  
23 conspiracy. It also tells about how to find if the defendant  
24 was involved in the conspiracy, and it's got some elements  
25 they have to satisfy.

1 Any i ssue wi th that one?

2 MR. FRI EDMAN: No, Your Honor.

3 MR. FOX: Your Honor, I wou ld ob ject to the last  
4 paragraph of the instruction -- I don't think we -- the  
5 paragraph that says "It is no defense that a person's  
6 participation in a conspiracy was minor or for a short period  
7 of time." I don't think we -- we haven't raised that as a  
8 defense, so I don't think we should be telling the jurors it's  
9 not a defense when that hasn't been a defense we've offered.

10 THE COURT: Okay. Is it fair to say this, that  
11 language appears in the pattern instruction?

12 MR. FOX: I believe so.

13 THE COURT: Anything to add, Mr. Friedman? Do you  
14 want to add anything to that?

15 MR. FRI EDMAN: No. It does appear in the pattern  
16 instruction and I think it is appropriate.

17 THE COURT: No. 19, deals with the elements of Count  
18 4. That's the unregistered destructive device. Any issue  
19 with that?

20 MR. FRI EDMAN: I think the Court made this correction  
21 on another instruction and I think it makes sense. I think if  
22 we insert the word incendiary bomb if parentheses each time  
23 destructive device is used, so in the second line --

24 THE COURT: Unregistered destructive device and then  
25 insert incendiary bomb.



1           MR. FRIEDMAN: -- in parentheses and then did the  
2 same in the seventh line, I think that would remove possible  
3 issues on appeal. Right at the end of the seventh line, so  
4 right at the end of the first element.

5           THE COURT: I see, that's where you are saying it  
6 should be.

7           All right, Mr. Fox, any comment?

8           MR. FOX: I agree with Mr. Friedman's suggestion and  
9 then I have some other comments. We've proposed Instruction  
10 No. 12 that is more specific. We believe that this  
11 instruction should state who was allegedly aided and abetted.  
12 So it should name the other person so there's no confusion as  
13 to who the alleged principal is.

14          Secondly, this instruction doesn't include the certain  
15 elements we believe are essential.

16          I filed a memorandum prior to trial, saying that when you  
17 allege -- when someone is alleged to be an aider and abettor,  
18 they have to have specific intent and they have to -- while  
19 the principal may not have to know of the registration  
20 requirements, when you are accused of aiding and abetting  
21 someone, to possess something, the defendant is the aider and  
22 abetter has to have specific intent with regard to the  
23 registration requirements, otherwise if you pick up a friend  
24 and they are driving with their gun on a hunting trip and it  
25 hasn't been registered, you could be guilty.

1       So you have to have specific intent.

2       And I have cited a case, a Ninth Circuit case in my memo,  
3 the Sayetsitty case, 107 F.3d 1405, 1997, that talks about how  
4 aiding and abetting has an additional element of specific  
5 intent.

6       So we think the government needs to prove that Ms. Waters  
7 knew of the registration requirements for an incendiary bomb,  
8 and knowing of these requirements, intentionally assisted the  
9 other people to possess it, without registering it, so she has  
10 to know the registration requirements to be an aider and  
11 abettor.

12       And then finally, the principals have to know the  
13 characteristics of the bomb that require it to be registered.  
14 So the principal don't have to know the registration  
15 requirement but they have to have some knowledge of the  
16 characteristics of this thing to cause it to be registered.

17       So our proposed instruction 12 sets that out.

18       THE COURT: All right. You are saying instead of  
19 this instruction, that's what should be given.

20       MR. FOX: Right.

21       THE COURT: Now, I am going to refer you to -- and  
22 we'll get to that a little later, but I believe instruction 23  
23 addresses aiding and abetting, and that language seems to  
24 appear at the bottom, the elements set forth.

25       MR. FOX: Your Honor, I don't believe this has the

1 element of specific intent. So a person has to know what the  
2 aider and abettor under this instruction has to know,  
3 knowingly and intentionally aided, counseled, commanded,  
4 induced, or procured that person to do the crime.

5 This doesn't have the specific intent element requirement  
6 that Ms. Waters knew of the registration requirements.

7 THE COURT: I am not so sure that's an element that  
8 you touched on there, but anyway, I have it noted and I will  
9 look at it.

10 MR. FOX: I did file -- it's in my trial memo.

11 THE COURT: Okay. Let's move then to 20.

12 MR. FRIEDMAN: For the record, we think this is an  
13 appropriate pattern instruction and should not be changed, 19,  
14 with the exception of the one correction.

15 THE COURT: You both agree on the incendiary bomb  
16 insertion.

17 No. 20 deals with knowingly. Any issue with that one?

18 MR. FOX: Your Honor, the second sentence, "The  
19 government is not required to prove that the defendant knew  
20 that his or her acts or omissions were unlawful." It should  
21 be "her acts." That's not the case for aiding and abetting.  
22 When you are alleged to be an aider and abettor, the  
23 government is required to prove she had specific intent of the  
24 registration requirements, for instance, so we would except to  
25 the giving of that second instruction.

1        Additionally, I guess we can -- when we deal with this  
2 one, we are dealing with my proposed instruction, there's no  
3 definition of intent in this instruction, just of knowledge.

4            THE COURT: All right. Anything to add to that from  
5 your standpoint, Mr. Friedman?

6            MR. FRIEDMAN: No, I think this is an appropriate  
7 pattern instruction and should be given as proposed.

8            THE COURT: I think it is a pattern instruction and  
9 really dealing with the definition of knowingly; do you agree  
10 with that?

11           MR. FOX: Yes.

12           THE COURT: No. 21, that's the term destructive  
13 device and what it means, I believe that's directly from the  
14 statute. Any issue with that?

15           MR. FRIEDMAN: Not from the government.

16           MR. FOX: The government filed a brief yesterday  
17 asking the Court to limit the definition of destructive device  
18 to what's in the indictment. What's charged in the indictment  
19 is incendiary bomb. That language "incendiary bomb" is going  
20 to be in the to-convict instructions, so we believe everything  
21 under (I) should be excluded. So we shouldn't be telling the  
22 jurors anything about grenades, rocket, missile, or similar  
23 devices. We've alleged incendiary bomb; that's what we should  
24 instruct on.

25           THE COURT: But this is the statute which the

1 defendant was charged.

2 MR. FOX: It is the statute, but not what's in the  
3 indictment.

4 THE COURT: All right. Mr. Friedman, any comment as  
5 so what Mr. Fox is saying, everything in this instruction  
6 below bomb should be deleted?

7 MR. FRIEDMAN: I guess I would think it's probably  
8 clearest and best for the jury just to have the entire  
9 definition, so to go all the way down as it is here, to  
10 basically give it in this form, because it tells the jury what  
11 the definition is, as opposed to truncating it. They might  
12 draw a different inference from seeing part of the definition,  
13 as opposed to the full definition.

14 THE COURT: Mr. Fox, one other question. The one you  
15 are mainly concerned about, device similar, is that not part  
16 of the definition?

17 MR. FOX: It's part of the definition, but it hasn't  
18 been alleged in the indictment. So we believe that by  
19 instructing on VI, the Court will allow possibly the jurors to  
20 convict Ms. Waters with something she hasn't been charged  
21 with.

22 THE COURT: All right. No. 22 talks about  
23 destructive device. Any issue with that?

24 MR. FRIEDMAN: Just a technical one. In the third  
25 sentence, the sentence beginning "Any device", I think we

1 would want to add the words "Containing combustible material."  
2 I think it was in an earlier draft and may have been dropped  
3 out.

4 THE COURT: What language? Say that again.

5 MR. FRIEDMAN: "Any device containing combustible  
6 material," because towards the end of the sentence there's a  
7 reference to that combustible material.

8 THE COURT: I see what you are saying. Mr. Fox.

9 MR. FOX: Your Honor, we've argued about this  
10 extensively. We have strong objections to the Court's  
11 definition of destructive device. We've briefed that. We've  
12 argued about it. This instruction, you know, we believe goes  
13 way beyond what the statute allows, it goes beyond what  
14 science allows, we think it's unconstitutionally vague.

15 I mean, under this definition, a match could be a  
16 destructive device, and that's just not the law.

17 So, I don't know if the Court wants me to reargue  
18 everything.

19 THE COURT: I don't want you to reargue, I just want  
20 you to tell me why you think it shouldn't be given at all.  
21 You are saying it's unconstitutionally vague.

22 MR. FOX: I have written extensive briefing on this.

23 THE COURT: And I have ruled on this.

24 MR. FOX: I am telling you my position.

25 THE COURT: That's why you take the position, the

1 reason why this instruction shouldn't be given, for the  
2 reasons you stated in your pleading?

3 MR. FOX: Right.

4 THE COURT: If it is given, this language that  
5 Mr. Friedman just mentioned, any comment on that?

6 MR. FOX: I can't agree to anything in this  
7 instruction, okay.

8 THE COURT: All right. No. 23 talks about possessing  
9 an unregistered destructive device, or aiding and abetting in  
10 that.

11 Any issue with that one?

12 MR. FRIEDMAN: No.

13 MR. FOX: I think I already indicated this  
14 instruction does not require specific intent, that the person  
15 alleged to be the aider and better knows of the registration  
16 requirements. This would allow for conviction of someone who  
17 picks up a friend with an unregistered shotgun without the  
18 person knowing that.

19 THE COURT: Let me ask you exactly what you are  
20 suggesting -- you are saying specific intent should be added  
21 to this.

22 MR. FOX: Yes, I believe in my trial brief I have set  
23 out that analysis.

24 THE COURT: All right. I believe some of this -- I  
25 will have to look at some of this that I have ruled on. These

1 issues have been coming up from the beginning, and the Court  
2 has ruled on it.

3 MR. FOX: The specific intent I don't think we've  
4 ever talked about before.

5 THE COURT: Mr. Friedman, did I give you a chance to  
6 speak to this?

7 MR. FRIEDMAN: You probably did. I think it's the  
8 pattern instruction and it's appropriate. If we start  
9 changing it I think we have a lot of problems.

10 THE COURT: You agree it is a pattern?

11 MR. FOX: You know, quite honestly Your Honor, I  
12 don't have that knowledge right now.

13 THE COURT: I am not asking you to like it.

14 MR. FOX: I can't recall exactly the pattern  
15 instruction.

16 THE COURT: Okay. 24 deals with Count 5, arson of a  
17 building.

18 MR. FOX: May I go back to 23 for a second? I guess  
19 also we would except to the giving of the last paragraph. I  
20 think the government should prove who committed the crime and  
21 who was the abettor and aider.

22 THE COURT: That's why you are saying they should  
23 give specific intent as to specific person doing these things?

24 MR. FOX: Specific intent would apply to the alleged  
25 abettor and aider, but the jury should be unanimous as to who



1 the principal is, and they should be told who the alleged  
2 principals are and they need to be unanimous to that, so we  
3 would except to that last paragraph. Otherwise, six of the  
4 jurors may think it was Capitol Hill Girl that was the  
5 principal and six of jurors may think it was Lacey Phyllabaum.  
6 But they should be told who the alleged principals are, they  
7 need to agree on it unanimously, so the government should have  
8 to prove that.

9 THE COURT: So you disagree with the paragraph,  
10 because you are saying they should prove precisely who was  
11 aiding and abetting?

12 MR. FOX: And who the principals are and they should  
13 be unanimous who that was under the Sixth Amendment.

14 THE COURT: All right. I haven't seen the form of  
15 the verdict so I will see if that cleared up this very thing  
16 you are talking about.

17 MR. FRIEDMAN: Just so the Court knows, it doesn't,  
18 but the law doesn't require us to prove that and the pattern  
19 instructions specifically say we don't have to.

20 THE COURT: I understand that.

21 No. 24, Count 5. That's the arson of the building used in  
22 interstate commerce and the elements set forth there as to the  
23 proof.

24 Any disagreement with that?

25 MR. FRIEDMAN: No.

1 THE COURT: Mr. Fox, any disagreement with that?

2 MR. FOX: A few things, Your Honor, just for the  
3 record, I would repeat our commerce clause argument, that this  
4 is not a building that was used in interstate commerce, it  
5 wasn't the principal focus, the Court has ruled on that, I am  
6 repeating my objection.

7 The problem -- there's another problem, that this  
8 instruction doesn't refer to which building and which date.  
9 Again, given all of the debates in -- there's been no evidence  
10 as to who burned down the Animal Control Unit in Olympia on  
11 June 20, 1998, that the government introduced evidence of  
12 that.

13 I don't want the jurors to have any confusion that we are  
14 talking about the Center for Urban Horticulture.

15 THE COURT: Isn't that what Count 5 is alleging?

16 MR. FOX: If the Court gives the Government's  
17 proposed instruction, then that cures the problem, but as the  
18 instructions are set out right now, the jurors aren't given  
19 any dates or times for specific buildings.

20 So I think this instruction should make it very clear what  
21 the date is and what the building is.

22 The other issues with regards to this instruction, we  
23 believe that the defendant intended the building would be  
24 destroyed, not just damaged, but destroyed; And I think we  
25 raised that in some of our briefing.

1       Then also, we believe there are additional instructions  
2 that the Court should give that we can address in a second as  
3 to the jurors determining whether this is truly a building  
4 engaged in interstate commerce and what that means. That  
5 should be a jury question with specific instructions.

6           THE COURT: All right.

7           MR. FRIEDMAN: As I look at this, I think I actually  
8 agree with Mr. Fox. If we gave instruction 1, it would make  
9 it clearer exactly which and avoid changing other  
10 instructions. So I think if we gave Government's instruction  
11 1 that would be helpful in resolving a lot of these issues.  
12 Otherwise I think it's an appropriate pattern instruction and  
13 correctly states the law and should stay as it is.

14          THE COURT: All right. No. 25, Count 6 and that's  
15 using a destructive device, the incendiary bomb. And the  
16 elements the jurors must find. Any issue?

17          MR. FRIEDMAN: Two things: In the second element, we  
18 would ask the Court add "and intentionally" after the word  
19 "knowingly." This is in response to one of the briefs they  
20 filed and I think the statute does require that it be "and  
21 intentionally."

22          THE COURT: Do you agree with that Mr. Fox?

23          MR. FOX: Yes.

24          MR. FRIEDMAN: Then after destructive device in the  
25 same element, I think we should add incendiary bomb in

1 parenthesis, in the very next line, the second element.

2 MR. FOX: And also in the third element.

3 MR. FRIEDMAN: It's unnecessary there.

4 THE COURT: Would that also apply after the  
5 destructive device on line 15?

6 MR. FRIEDMAN: I think it's not necessary because it  
7 refers back, but I don't have an objection.

8 THE COURT: Do you think that about covers that in  
9 terms of intentionally and incendiary bomb, Mr. Fox; you are  
10 satisfied with those?

11 MR. FOX: We are satisfied with those additions but  
12 we do have other problems with it.

13 THE COURT: Anything else you want to say?

14 MR. FOX: For the record we object to this  
15 instruction being applied to Count 7; that was the count that  
16 was added in the fourth superseding indictment, the count  
17 involving an institution receiving federal financial  
18 assistance. We had previously filed and the Court had denied  
19 our statute of limitations objection to that count. I just,  
20 for the record, am renewing my objection to that count.

21 THE COURT: Okay.

22 MR. FOX: There are also proposed instructions that  
23 are in our packet that go further to defining what a crime of  
24 violence is and defining what a person is. We can address  
25 those when we get to our proposed packet, if you wish.

1           THE COURT: Yes, let's do it that way. No. 26 deals  
2 with count 7, the indictment charged with committing the  
3 arson, that's the University of Washington, and sets forth the  
4 elements. Any issues with that?

5           MR. FRIEDMAN: Not from the government Your Honor.

6           MR. FOX: Two things, Your Honor. First, again, no  
7 date or name of building are in this instruction. If we give  
8 the Government's proposed 1, that would take care of that  
9 problem.

10          There is still lingering, and I realized this last night,  
11 prior to trial, we had moved to dismiss Count 8 of the fourth  
12 superseding indictment alleging that the statute here was  
13 unconstitutional because the statute doesn't have any amount  
14 in it for how much financial assistance an institution has to  
15 receive for there to be federal jurisdiction. The Court  
16 reserved ruling on that saying it needed to see the evidence,  
17 and I believe there was an order to that effect issued, which  
18 is docket 233, order denying as premature Waters' motion to  
19 dismiss Count 7 of the fourth superseding indictment.

20          We believe evidence has come out there's certainly  
21 evidence that there's a lot of federal financial assistance  
22 going to the University of Washington. We believe that this  
23 statute is unconstitutional for the reasons I set out in my  
24 brief; it violates the 10th amendment, it infringes --  
25 entrenches on state authority. The statute doesn't have any

1 numbers in it. It's just unconstitutional. I raised it and  
2 the Court reserved ruling, and I am renewing my objection now.  
3 And I think the Court needs to rule to tie up that issue that  
4 I raised at Court's docket 233, that the Court reserved ruling  
5 on.

6 THE COURT: Mr. Friedman, any comment?

7 MR. FRIEDMAN: I think the statute is constitutional.  
8 No other comments.

9 THE COURT: I don't think I am prepared to say the  
10 statute is unconstitutional. I heard testimony and everybody  
11 heard testimony how funds come in. I think that is sufficient  
12 enough for the Ninth Circuit to go to work on the issue.

13 MR. FOX: Okay.

14 THE COURT: From that standpoint, anything else other  
15 than the constitutional aspect of this?

16 MR. FOX: Other than what I have said on a prior  
17 arson count.

18 THE COURT: About the date?

19 MR. FOX: And also the intent that the whole building  
20 should be destroyed and not just damaged.

21 MR. FRIEDMAN: The statute covers damage or destroyed  
22 and we charged it that way. So that's the appropriate  
23 version.

24 THE COURT: No. 27 talks about Exhibits 781 and 785,  
25 about whether or not there's a record showing registration as

1 to this device, and it tells them how to view those  
2 certificates. Any issue with that one?

3 MR. FRIEDMAN: Just a wording thing. It says no  
4 record of any device being registered to any of the defendants  
5 and the other names. I think it would be better if we put  
6 Briana Waters' name in there just to be clear -- "and no  
7 destructive device being registered to Briana Waters" and the  
8 other folks on the list.

9 THE COURT: Mr. Fox do you agree with that?

10 MR. FOX: We would object to that -- basically this  
11 instruction being given, at least the second sentence being  
12 given at all. I don't think the Court needs to repeat what  
13 the evidence says, the certificates speak for themselves. The  
14 Court shouldn't then be telling the jury that the certificates  
15 state that a custodian made a diligent search of the record  
16 and found no record. Why should the Court be telling the  
17 jurors what the evidence is? They have the evidence.

18 I agree though, that jurors should be instructed that from  
19 the certificates, they may, but need not, decide as to whether  
20 or not someone actually had a registration. But I don't think  
21 the Court should be repeating what the evidence is.

22 THE COURT: If this instruction is given, you think  
23 Briana Waters' name should be shown on there, that she did not  
24 have --

25 MR. FOX: Yes.

1 THE COURT: Okay. Anything else to add to this?

2 This is, as far as you know, a pattern?

3 MR. FOX: I actually --

4 THE COURT: You didn't look at any of the patterns?

5 MR. FOX: I don't know whether this is a pattern.

6 MR. FRIEDMAN: It is, and the language at issue is  
7 part of the pattern language.

8 MR. FOX: I don't know whether it is a pattern.

9 THE COURT: Well, if you don't know, you don't know.  
10 I thought you guys compared the patterns.

11 MR. FOX: I did at some point.

12 THE COURT: Or you just pick your own and send it in.  
13 You do your own.

14 MR. FOX: That's true also.

15 THE COURT: No. 28 tells them about they are the ones  
16 to render the verdict and that sort of thing. Any issue with  
17 that.

18 MR. FRIEDMAN: No.

19 MR. FOX: It's kind of the standard.

20 THE COURT: The punishment provided is for the Court  
21 to decide. Any issue with that?

22 MR. FRIEDMAN: No.

23 MR. FOX: I do believe the jurors should be  
24 instruction they can't consider punishment insofar as it makes  
25 them careful. I believe your proposal is a pattern



1 instruction, but I don't think that -- I think it violates due  
2 process and the right to a jury trial. The jurors should know  
3 the punishment to be considered, so that they are very, very  
4 careful about how they evaluate the evidence.

5 THE COURT: Do I have to tell them to be careful?  
6 You say I have to tell them something on one hand and on the  
7 other hand don't tell them.

8 MR. FOX: My authority is Washington State pattern  
9 instructions.

10 THE COURT: You are saying, you want me to add what  
11 language?

12 MR. FOX: That the juror should consider the  
13 punishment, insofar as it makes them careful in evaluating the  
14 evidence.

15 MR. FRIEDMAN: We object to that of course, Your  
16 Honor.

17 THE COURT: All right. No. 30 is talking about when  
18 they are electing a presiding juror. Any issue with that?

19 MR. FRIEDMAN: No.

20 MR. FOX: No.

21 THE COURT: And communicating with the Court and that  
22 sort of thing. Any issue with that?

23 MR. FRIEDMAN: No.

24 MR. FOX: No.

25 THE COURT: Then the form of the verdict, which we

1 will work that out. Any issue with that?

2 MR. FOX: Your Honor, could I just go back to  
3 something that we dealt with at the very beginning and put  
4 something on the record.

5 THE COURT: What is that.

6 MR. FOX: This is on Instruction No. 3. This is a  
7 pattern instruction but I would like the record to reflect I  
8 do have an objection to this, and I have an objection to the  
9 second sentence in the first paragraph: "It is not required  
10 that the government prove guilt beyond all possible doubt."  
11 Secondly I would have an objection to the second clause of the  
12 next sentence "and is not based purely on speculation." I  
13 don't think the Court should be instructing on the due process  
14 clause, instructing the jury kind of in a negative. You  
15 should tell them the government has to prove a case beyond a  
16 reasonable doubt. I don't know -- to say it's not required  
17 that the government prove guilt beyond all possible doubt, I  
18 think that counteracts the burden of proof.

19 THE COURT: What line are you reading from?

20 MR. FOX: Line 4, the second sentence of paragraph 1.  
21 I object to, "it is not required that the government prove  
22 guilt beyond all possible doubt."

23 I think that that language contradicts the Sixth Amendment  
24 and the Fifth Amendment right to a jury trial and right to due  
25 process.

1 I think the government should prove guilt beyond all  
2 possible doubt. So I don't think the Court should be telling  
3 the jury the government doesn't have to do that.

4 THE COURT: Well, the burden of proof is reasonable  
5 doubt.

6 MR. FOX: Right, but it's our position that possible  
7 doubt is reasonable doubt. If jurors possibly have a doubt,  
8 then that's reasonable doubt. Let's just tell them prove  
9 beyond a reasonable doubt. We don't have to go forward and  
10 tell them what reasonable doubt isn't.

11 THE COURT: Okay. Any comment on that?

12 MR. FRIEDMAN: We'll defend it on appeal, Your Honor.

13 THE COURT: All right.

14 All right, so those are the comments on the instructions.  
15 Now, Mr. Friedman, any exception to any proposed instructions  
16 by you that's not in here?

17 MR. FRIEDMAN: No. Thank you, Your Honor.

18 THE COURT: Mr. Fox. We talked about -- let's see,  
19 let's start where there was --

20 MR. FOX: We have our proposed Instruction No. 3,  
21 which is the instruction about "you have heard evidence that  
22 Briana Waters has engaged in protests and other types of  
23 freedom of speech." Basically what this proposed instruction  
24 says, is that you can't convict her based upon the content of  
25 protected speech activities.

1        Given the issue of freedom of speech in this case, and  
2 reading materials, and things off the Internet, the fact that  
3 Ms. Waters was cross-examined about a protest at an office, we  
4 think it is very important that the jurors be given a strong  
5 direction from the Court that the First Amendment protects  
6 freedom of speech.

7        They may not agree with what Ms. Waters has thought or  
8 said or done in the past, in the realm of protected speech,  
9 but they should not convict her because of those speech  
10 activities.

11            THE COURT: You are saying your Instruction No. 3  
12 should be given.

13            MR. FOX: Yes.

14            THE COURT: And for those reasons.

15            MR. FOX: Yes.

16            THE COURT: Any others -- you had mentioned about the  
17 conspiracy instruction.

18            MR. FOX: Right. I am going through -- the next  
19 ones, Your Honor that we believe should be given is defense  
20 proposed Instruction No. 9.

21            THE COURT: All right.

22            MR. FOX: Which is a definition of intent. We gave a  
23 definition of knowledge and we think the jurors should be  
24 given a definition of intent. I actually couldn't find a  
25 pattern instruction on this, which is why I referenced LeFave

1 and Scott on that issue.

2 I think we should tell the jurors what intent means and  
3 not let them speculate.

4 We prepared instructions 10 and 11, are the instructions  
5 that we believe make it very clear that the jurors need to be  
6 unanimous under the Sixth Amendment as to the scope of the  
7 conspiracy, the objects of the conspiracy, that the government  
8 has proven the same conspiracy beyond a reasonable doubt.

9 Our proposed instructions make that crystal clear and I  
10 have addressed some of that in my trial memo so I would refer  
11 the Court to my trial memo for those two instructions.

12 Similarly, and I won't repeat my argument about my  
13 objections to the to-convict instructions, but I would ask the  
14 Court, instead of the ones you have proposed, to give our  
15 proposed Instruction No. 12, with regards to the unregistered  
16 firearm. We think it sets out the specific intent requirement  
17 more fully than the way it comes out in the proposed  
18 instructions.

19 THE COURT: Okay.

20 MR. FOX: The same thing with regard to instruction  
21 14, for the reasons that I believe the Court's proposed  
22 to-convict on Count 5 is insufficient, we would ask the Court  
23 to give ours instead. I went into some of this in our trial  
24 memo.

25 We would ask the Court on defense proposed instruction 15,

1 to define when a building is used in an activity affecting  
2 interstate commerce. We believe the jurors should be the  
3 ultimate deciders whether a building's primary function is  
4 commercial rather than just having a tacit connection to  
5 commerce.

6 I raised a lot in the pretrial briefing, but I think it is  
7 ultimately the jury has to decide that. The Court denied it  
8 on legal grounds, but the jurors should be told what  
9 interstate commerce means and when a building has a primary  
10 connection to interstate commerce.

11 No. 16, our proposed instruction 16 on arson, we -- I am  
12 sorry, destructive device, incendiary bomb in relation to a  
13 crime of violence, we believe that you should give our  
14 proposed instruction 16 for the reasons that I have explained  
15 before and in the trial memo, but more particularly,  
16 Instruction No. 17 should define crime of violence to the  
17 jury, so that jurors know what a crime of violence is.

18 THE COURT: You are talking about 16 now?

19 MR. FOX: I moved on to 17. 16 I think I covered  
20 when I excepted to the Court's instruction on that.

21 But in terms of 17, I think a crime of violence should be  
22 defined to the jury. It is a definition from the statute.  
23 The jurors should be told that a crime of violence has to have  
24 an element against a person or property of another. That ties  
25 into No. 18, our proposed Instruction No. 18, that person and

1 person of another -- and this comes right from the statute --  
2 include individuals, corporations, companies; it does not  
3 include sovereign entities.

4 I raised a lot of this in pretrial motions. On legal  
5 grounds the Court denied those motions, but ultimately the  
6 jurors should determine whether in fact this is truly a crime  
7 of violence committed against a person and not a sovereign  
8 entity. So I would ask the Court give these instructions so  
9 the jury makes that decision.

10 THE COURT: All right.

11 MR. FOX: Our proposed instruction No. 19, I am not  
12 going to repeat all the legal arguments we made about  
13 destructive devices, but we believe our proposed No. 19 is the  
14 true definition of a destructive device that should be given  
15 to the jury. We've argued about this a lot, I am not going to  
16 repeat those arguments right now, but No. 19 conforms to all  
17 the legal arguments we made previously.

18 THE COURT: Okay.

19 MR. FOX: Again, instruction 20, that ties into our  
20 statute of limitations argument that we raised earlier about  
21 count 7 and instruction 20 should be given so the jurors don't  
22 convict Ms. Waters of a theory of arson that was charged  
23 beyond the statute of limitations.

24 With regard to No. 21, it is not enough that Briana Waters  
25 was merely present at the scene of a crime of violence, that

1 instruction I think I covered in my memo and I would refer the  
2 Court to my motions and memoranda related to destructive  
3 devices.

4 Similarly, my "to convict," 22, proposed instruction 22,  
5 the to-convict on Count 7, I will repeat -- I will refer the  
6 Court to my arguments I made about the Court's to convict  
7 instruction on 7. This is more specific. It names the Center  
8 for Urban Horticulture. It names the date.

9 THE COURT: Your 22 should be given, in terms of 22  
10 in the Court's packet?

11 MR. FOX: Instead of 26. Then two days ago I  
12 proposed supplemental instructions, unfortunately I named it  
13 22 again. 22, 23, and 24, these are the proposed instructions  
14 I filed two days ago, and we talked about this earlier. These  
15 are instructions about the felony convictions of Jennifer  
16 Kolar and Lacey Philabaum. We think there should be a  
17 separate instruction about their felony convictions, and how  
18 this should be considered, in addition to the fact that they  
19 pled guilty.

20 We think the No. 23 should be given.

21 THE COURT: Now, are you going to one you've already  
22 commented on?

23 MR. FOX: Yes.

24 THE COURT: Which one is that?

25 MR. FOX: When we were talking about Instruction No.



1 13, your Instruction No. 13, I said that I had proposed  
2 separate instructions.

3 THE COURT: That's 22 and 24, you said?

4 MR. FOX: Yes, and then 23 is an instruction that we  
5 proposed specifically about Robert Corrina, a witness who has  
6 lied under oath on a prior occasion. We think there should  
7 be -- this is a pattern Instruction 4.8 -- and we think there  
8 should be a specific instruction about Mr. Corrina, the fact  
9 that he lied under oath and that the jury should consider that  
10 along with other evidence.

11 Then today, I proposed an instruction which I didn't  
12 number, I think I passed it back about missing witnesses.

13 THE COURT: You are asking that that be given?

14 MR. FOX: A witness peculiarly available to the  
15 prosecution to maintain its burden of proof which it did not  
16 produce or explain why it cannot is presumed one to have  
17 testified against the government.

18 There are a lot of people that are not testifying in this  
19 trial, who have cooperation agreements with the government.  
20 There's Stan Meyerhoff, Suzanne Savoi e, Kevin Tubbs. These  
21 are all people that have reached cooperation agreements with  
22 the government. They are peculiarly available to the  
23 government. I would note that my efforts to even talk to any  
24 of these people, have been met with refusals by their  
25 attorneys to even let their clients talk to me.

1       The government has cooperation agreements with these  
2 people, and the fact that they haven't called those witnesses,  
3 the jurors need to be told that that means they are not going  
4 to help the government. They can bring them in. I don't have  
5 that ability. I don't have a cooperation agreement with them.

6       So they are peculiarly available to the government and  
7 this is a traditional instruction of missing witnesses.

8           THE COURT: We are talking now because the attorneys  
9 wouldn't let them talk to you, the defendant's attorneys?

10          MR. FOX: Susan Savoi e's attorney, Stan Meyerhoff.  
11 There's people I asked to talk to and they said no. There's  
12 cooperation agreements with these people, and the fact that  
13 the government has not called them, this should be considered  
14 by the jury negatively against them.

15          THE COURT: I understand. I don't know what else to  
16 say. You didn't have any that you thought should be given  
17 that I haven't.

18          MR. FRIEDMAN: I disagree with each of the additional  
19 ones the defense has asked. I don't think the Court wants to  
20 hear the argument.

21          THE COURT: I don't want to take argument.

22          MR. FOX: May I ask the court what it wants to do in  
23 terms of formal instructions, because I don't want to have to  
24 repeat all the legal arguments I have just made.

25          THE COURT: What I am saying is this: What we have

1 taken up here today, now, and as you refer to in terms of your  
2 pleadings and the issues we brought up, you don't need to do  
3 that again. The record is complete and is sufficient for you  
4 to take up what I do here based on that. So you don't have to  
5 redo all that over again.

6 So don't feel like you have to do that.

7 MR. FOX: Okay.

8 THE COURT: If I don't give something, or give  
9 something, you just make your exceptions and reasons on the  
10 record and they will stand.

11 MR. FOX: I guess, does the Court want me at some  
12 point, when the Court gives a final packet, to just make an  
13 exception to what's given, what's not given, without going  
14 into the legal arguments?

15 THE COURT: Correct, because you've already done that  
16 and it will serve because I don't want you to do that all over  
17 again.

18 The other thing I need to talk to you about is closing,  
19 and I will go back and consider all the things you've said and  
20 then I will generate the final copy.

21 MR. FOX: The record should reflect Mr. Bloom is now  
22 present.

23 THE COURT: Okay.

24 So Mr. Friedman, I will start with you. Are you giving  
25 the -- well, I guess Mr. Bloom came in late and Mr. Bartlett

1 is not here, so I assume those two are going to argue the  
2 case.

3 MR. FRIEDMAN: Mr. Bartlett is going to do the main  
4 closing at least.

5 THE COURT: And Mr. Bloom.

6 MR. BLOOM: Yes.

7 THE COURT: Can you speak for him?

8 MR. FRIEDMAN: I can. You mean in terms of how much  
9 time we think?

10 THE COURT: Yes.

11 MR. FRIEDMAN: I think there's a fair amount to  
12 address after a three week trial between the two closings. No  
13 more than 2 1/2 hours, if the Court would allow that much  
14 time.

15 THE COURT: You think it will take you two and a half  
16 hours to cover this? Between two closings? You folks have  
17 been living with this a long time. You can name Exhibits  
18 going to a particular issue without even looking at anything.  
19 So I am just trying to understand now. You think you need 2  
20 1/2 hours.

21 MR. FRIEDMAN: To be safe. We will try to be faster,  
22 Your Honor.

23 THE COURT: Okay. Mr. Bloom?

24 MR. BLOOM: Same.

25 THE COURT: All right. Anybody been practicing?

1 MR. BLOOM: I am sorry.

2 THE COURT: Anybody been practicing?

3 MR. FOX: Well, I represented Mr. Bloom was in front  
4 of the mirror.

5 THE COURT: He said you were back at the hotel in  
6 front of the mirror.

7 MR. BLOOM: No, I don't keep mirrors where I live any  
8 more, I am getting too old.

9 THE COURT: I will tell you what I think about it.

10 All right. Right now I am going to take a recess and go  
11 through these and deal with these instructions and get those  
12 ready.

13 THE CLERK: All rise.

14 THE COURT: Answer one thing for me, too, we are  
15 talking rebuttal witnesses.

16 MR. FRIEDMAN: We'll have one, and I think it will be  
17 less than 15 minutes.

18 THE COURT: Who is that?

19 MR. FRIEDMAN: FBI agent Chris Ford.

20 THE COURT: You've exchanged.

21 MR. FOX: We've talked.

22 MR. FRIEDMAN: We are resuming at 10:00.

23 THE COURT: Hopefully at 10:00, but it's going to  
24 take me a while to deal with what I want to be done here. If  
25 we don't go right at 10:00, it shouldn't be too far behind

1 that.

2 THE CLERK: All rise, Court is in recess.

3 (Brief recess.)

4 THE COURT: It is my understanding the government has  
5 one rebuttal witness.

6 MR. BARTLETT: Yes, Your Honor.

7 THE COURT: Are we ready for that?

8 MR. FOX: Yes.

9 THE COURT: All right. Bring them in.  
10 (Jury present.)

11 THE COURT: All right. You may be seated.  
12 Good morning to you. I believe we have one.

13 MR. BARTLETT: Yes, the United States calls Chris  
14 Ford to the stand.

15 THE COURT: Come forward, sir and be sworn.

16 CHRISTOPHER FORD, called as a witness, duly sworn.

17 MR. BARTLETT: May I inquire, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. BARTLETT:

20 Q. Could you tell the members of the jury your first and last  
21 name and spell your last name for the Court Reporter?

22 A. Sure. My name is Christopher Ford, FORD.

23 Q. Where do you work?

24 A. I work for the Federal Bureau of Investigation, Seattle  
25 office?

- 1 Q. What is your current assignment?
- 2 A. Domestic terrorism squad.
- 3 Q. Are you a Special Agent?
- 4 A. Yes.
- 5 Q. How long have you been with the FBI?
- 6 A. Just coming up on three years.
- 7 Q. Last night after court, did I ask you to do something?
- 8 A. Yes, you did.
- 9 Q. What was that?
- 10 A. You asked me to go down to Olympia, to Ralph's Thriftway
- 11 and drive a route that you designated, taking I-5 northbound
- 12 toward Seattle and taking an exit that would lead me to
- 13 Greenlake Bar and Grill.
- 14 Q. Did you do that?
- 15 A. I did.
- 16 Q. What time did you leave Ralph's?
- 17 A. We left Ralph's at 7:12 p.m.
- 18 Q. And after leaving Ralph's Thriftway at 7:12, how long did
- 19 it take you to get to the Greenlake Bar & Grill?
- 20 A. 68 minutes.
- 21 Q. How many miles was that?
- 22 A. 67 miles.
- 23 Q. During the time you were driving, did you ever drive over
- 24 65 miles an hour?
- 25 A. I set my cruise control on my car at 60 miles an hour.

1 MR. FOX: I am sorry, 60?

2 A. 60, 6-0.

3 Q. In addition to the drive last night, did I also ask you to  
4 try to obtain information as to when sunset was on Sunday, May  
5 20 of 2001?

6 A. Yes, you did.

7 Q. Did you find that?

8 A. Yes.

9 Q. If you could take a look, I assume you didn't do it off  
10 the top of your head?

11 A. No, and I have a printout here from the U.S. Naval  
12 Observatory Astronomical Applications Department. You asked  
13 me to look at the sun times for Sunday, May 20, 2001, and you  
14 wanted me to determine sunrise -- excuse me, sunset, which was  
15 at 8:47 p.m., and end civil twilight at 9:24 p.m.

16 Q. If you could take a look at Government's 1124 in front of  
17 you, do you see that?

18 A. I do.

19 Q. Your Honor, I think we have a stipulation that these are  
20 medical records from Ms. Waters, from January 21, 2002, at  
21 Providence St. Peters hospital.

22 MR. FOX: No objection.

23 THE COURT: All right, admitted.

24 (Exhibit No. 1124 admitted.)

25 BY MR. BARTLETT:



1 Q. Looking at the top line of that document, do you see a  
2 registration time for when Ms. Waters checked into those?

3 A. Yes, 6:32 a.m.

4 Q. And when was she discharged?

5 A. Looks like the bottom, 10:20 a.m.

6 MR. BARTLETT: No further questions.

7 CROSS-EXAMINATION

8 BY MR. FOX:

9 Q. Good morning, Agent Ford.

10 A. Good morning.

11 Q. I am Neil Fox. I think we met just briefly.

12 A. We did.

13 Q. You drove from Ralph's Thriftway in Olympia, to Greenlake  
14 Bar & Grill?

15 A. Correct.

16 Q. I take it you went on I-5 the whole way, you went to I-5  
17 and went up to Seattle?

18 A. Yes.

19 Q. You go past the Tacoma Dome?

20 A. Yes.

21 Q. You go down through downtown Seattle?

22 A. I did.

23 Q. Do you know what exit you got off at on I-5?

24 A. I don't know the exit number, but I believe it was for  
25 Northeast 65th Street.

1 Q. That would have been past the Ravenna exit?

2 A. That should have been the Ravenna exit.

3 Q. That's the Ravenna exit?

4 A. Yeah.

5 Q. I take it Mr. Bartlett didn't ask you to make a stop at  
6 the University of Washington Center for Urban Horticulture?

7 A. No, he did not.

8 Q. Do you know where that building is, the Center for Urban  
9 Horticulture?

10 A. I have an idea where it is at.

11 Q. If you were to drive to a dumpster near the Center for  
12 Urban Horticulture how would you have gotten there?

13 A. To be honest, I wouldn't. I have no idea because I didn't  
14 attempt to go that way.

15 Q. I take it you were not driving with a bunch of gasoline in  
16 the back of your car?

17 A. I was not.

18 Q. And I take it that you -- if you had been stopped for  
19 speeding, it wouldn't have bothered you, the speeding ticket  
20 perhaps, but you didn't have any fear about being stopped?

21 A. I didn't have any fear of being stopped because I was told  
22 to not exceed the speed limit.

23 Q. Sure, but for some reason you committed a traffic  
24 infraction on the way, you would have said, oh, I am an FBI  
25 agent?

1   **A.** In theory, yes, but when I drove the route last night, I  
2   had no issues and I kept my speedometer at 60 miles an hour  
3   and I did my best to hold that speed.

4   **Q.** Sure. But my question is -- you weren't worried anything  
5   bad would happen to you if you got stopped?

6   **A.** No.

7   **Q.** And you didn't have any electrical timing devices in the  
8   back of your car, right?

9   **A.** I did not.

10   **Q.** Now, there are traffic cameras on I-5, are there not?

11   **A.** From what I hear, yes, when I see the traffic reports in  
12   the morning.

13   **Q.** Sure, so if you wanted to get to Seattle to avoid traffic  
14   cameras, how would you have gone?

15   **A.** I couldn't tell you, I have never thought of it that way.

16   **Q.** Is there an alternate route that's direct to Seattle  
17   that's not on I-5?

18   **A.** There is. I took I-5 yesterday. That was the route I was  
19   assigned to take, so that's the one -- but I can tell you  
20   that's not the only way to get to Seattle.

21   **Q.** Can you give the jury some ideas of other possible routes?

22   **A.** I honestly can't because I live north of Seattle and I  
23   don't ever travel down to Olympia.

24   **Q.** Are you aware of any traffic cameras on streets that are  
25   not I-5?

1   **A.**   I am not.

2   **Q.**   Now, is it fair to say -- what day was yesterday, for the  
3   record?

4   **A.**   Wednesday, February 27.

5   **Q.**   Are you aware of what traffic patterns were like on I-5 on  
6   May 21, 2001?

7   **A.**   I am not.   I can tell you what the traffic patterns were  
8   last night.

9   **Q.**   Sure, but we are talking May 21, 2001?

10   **A.**   Sure.

11   **Q.**   Were you aware -- when you go up I-5, you go past the  
12   Tacoma Dome?

13   **A.**   Correct.

14   **Q.**   Were you testing out if there were any events at the  
15   Tacoma Dome on May 20?

16   **A.**   I was not.

17   **Q.**   How about the Mariners, you go right by where the Mariners  
18   play, when you go up through Seattle?

19   **A.**   In the vicinity.

20   **Q.**   Is it not correct that the Mariners were playing the  
21   Yankees on May 20, 2001?

22   **A.**   I wouldn't know, I didn't check.

23   **Q.**   I think they won actually.

24       They were probably playing earlier in the day if they were  
25   playing on a Sunday; isn't that correct?

1   **A.** I don't know, the schedule fluctuates, I don't know if it  
2 was an afternoon or evening game.

3   **Q.** Isn't it fair to say after the Mariners play a game,  
4 there's quite often a lot of traffic on I-5?

5   **A.** One could guess that there would be. Once again, I  
6 wouldn't know.

7   **Q.** Are you familiar with the 520 bridge?

8   **A.** I am.

9   **Q.** If you were going to go from downtown Seattle to the  
10 Montlake area of Seattle, by University Village, would it be  
11 fair to say you could go via 520?

12   **A.** Yes, that's one of many options.

13   **Q.** You would get off the highway, you'd have to cross the  
14 Montlake Bridge?

15   **A.** I believe so.

16   **Q.** Isn't it fair to say that that area of Seattle has a  
17 highly dense traffic, amount of traffic?

18   **A.** Depends on the time of day.

19   **Q.** Sure. Depends.

20       Now, May 20, 2001, was there not the University StreetFair  
21 going on that weekend?

22   **A.** I don't know.

23   **Q.** I would like to show the witness what's been marked for  
24 identification as A-216.

25       Take a look at that for a moment.

1 Can you identify what that is?

2 A. This is from The Daily.

3 Q. What's The Daily?

4 A. I am assuming it's literature from the University of  
5 Washington or at least a publication from the University of  
6 Washington.

7 Q. Can you identify what that says?

8 A. This is "Performers Keep the Avenue StreetFair  
9 Interesting."

10 Q. What's the date?

11 A. May 21, 2001.

12 Q. I would move the admission of A-216?

13 MR. BARTLETT: No objection.

14 THE COURT: Admitted.

15 (Exhibit No. A-216 admitted.)

16 Q. Is it fair to say this documents the fact that there was a  
17 University street fair the weekend of May 21, 2001 at the  
18 University of Washington?

19 A. That's the way it looks.

20 Q. And have you ever been to that street fair?

21 A. I have not, no.

22 Q. What generally happens, in your understanding, at a street  
23 fair?

24 A. To be honest I don't frequent street fairs. If there is a  
25 street fair, it usually doesn't catch my interest, therefore I

1 don't go.

2 Q. Do you think for a street fair, they block off a street?

3 A. Some do, some don't. I don't know if this specific one  
4 blocked off the street, unless it says in the article.

5 Q. Are you aware of what the traffic patterns were around the  
6 University district around that date?

7 A. I am not.

8 Q. I will hand you what's been marked for identification as  
9 A-217. Why don't you take a look at that document?

10 A. Sure.

11 Q. Can you identify that for the record?

12 A. Once again it's from The Daily, University of Washington.  
13 It says "Weekend Festivities Mean 50th opens, for time being."

14 Q. What's the date of that?

15 A. May 20, 2001.

16 MR. FOX: I would move the admission.

17 MR. BARTLETT: No objection.

18 THE COURT: Admitted.

19 (Exhibit No. A-217 admitted.)

20 BY MR. FOX:

21 Q. Can you read that in the record starting with "The annual  
22 Ave. Street Fair"?

23 A. How far do you want me to read?

24 Q. Start with the first paragraph.

25 A. Sure. "The annual Ave. Street Fair, starting Saturday and

1 lasting all weekend, means more than a festive atmosphere,  
2 sidewalk sales, entertainment and food.

3 "The weekend means the removal of four blocks of  
4 roadblocks on Northeast 50th Street between 15th Avenue  
5 Northeast and 11th Avenue Northeast.

6 "The City of Seattle hopes to open the street by 4 p.m.  
7 Friday, and wants to leave it open until 4 a.m. Monday.

8 "The segment of Northeast 50th Street between 15th  
9 Northeast and 11th Avenue Northeast is only part of a plan to  
10 bury utilities and repave the road. The section will stay  
11 closed until mid-June. Once that section of 50th is  
12 completed, the contractor will move to the blocks of Northeast  
13 50th Street between 15 Avenue Northeast and 17th Avenue  
14 Northeast."

15 **Q.** Then just the next paragraph, please.

16 **A.** "The construction along Northeast 50th Street is not the  
17 only roadwork in the area. Over the last month, the  
18 Washington Department of Transportation has clogged northbound  
19 Interstate 5 by limiting traffic to as little as one lane.  
20 The two projects are independent, but have caused the closure  
21 of the Northeast 50th Street on-ramp to northbound I-5."

22 **Q.** Thank you. Isn't it correct, that in fact there's  
23 substantial construction on I-5 in the month of May, 2001?

24 **A.** I don't know. Going by the article, the article claims  
25 there may have been. I don't know personally.



1 Q. Let me have you look at what's been marked for  
2 identification as A-215. Can you identify that for the  
3 record?

4 A. This is from the Seattle Post-Intelligencer.

5 Q. What date is it?

6 A. May 3rd, 2001.

7 Q. What's the title of your article?

8 A. "Backups Expected as I-5 Lanes Close for Repaving."

9 MR. FOX: I would move the admission of A-215 .

10 MR. BARTLETT: No objection.

11 THE COURT: Admitted.

12 (Exhibit No. A-215 admitted.)

13 BY MR. FOX:

14 Q. Have you had an opportunity to review that.

15 A. Okay.

16 Q. Can you read -- why don't you tell the jury what the  
17 article says, while I get this straight?

18 Agent Ford, this article talks about a couple weeks of  
19 construction on I-5?

20 A. Correct.

21 Q. Starting May 3rd, correct?

22 A. Correct.

23 Q. And talking about how half, I believe -- the northbound  
24 half of the Ravenna crossing southeast of Greenlake is going  
25 to be closed off to get new pavement, right?

1 A. Yes, that's how it reads.

2 Q. It's supposed to -- the right lanes will remain closed  
3 through May 16?

4 A. Correct.

5 Q. And after that, it's expected the two left lanes will be  
6 closed so the work can move there, right?

7 A. Yes.

8 Q. So on the weekend of May 20, 21 there was substantial  
9 construction on I-5?

10 A. There appears to be quite a bit of construction.

11 Q. Construction in the University district?

12 A. Well, at least around the Ravenna exit.

13 Q. Sure, and the previous article talks about construction on  
14 50th, right?

15 A. Correct.

16 Q. And there's a University StreetFair?

17 A. Yes.

18 Q. And so your driving times didn't take into account any of  
19 that type of construction, did it?

20 A. No, they did not.

21 MR. FOX: I have no further questions.

22 MR. BARTLETT: Nothing further, Your Honor.

23 THE COURT: All right. You may step down. Any  
24 other -- no more testimony?

25 MR. BARTLETT: No more testimony Your Honor.

1           MR. FOX: We have nothing Your Honor.

2           THE COURT: Well, to give you the rest of the case, I  
3 am going to have you take your lunch hour at this time and  
4 maybe I can get you to eat a little bit earlier than you  
5 normally eat and have you back here, say, at noon, and you  
6 will get the rest of the case or start on the rest of the  
7 case.

8           As always, as you go about your business, you are not to  
9 discuss the case in any way until it is given to you for that  
10 purpose. When you are back in the building, of course, return  
11 to the jury room. Leave your books on your chair and I will  
12 see you at 12:00.

13          (Jury not present.)

14          THE COURT: All right. You may be seated.

15          I will get to you, just as soon as possible, the final  
16 instructions. I am having trouble seeing Mr. Fox, looking  
17 past Pat's head. Those of course will be the ones the Court  
18 is going to give and any exceptions and all that, your record  
19 will stand, you don't need to go through that again other than  
20 to say you except.

21          MR. FOX: Sure. I will just except to each one.

22          THE COURT: Other than that, we'll take the noon  
23 recess.

24          You folks hang around and be somewhere close and I will  
25 get those to you as soon as I can. Let Pat know your

1 whereabouts.

2 MR. BLOOM: When do you want us back?

3 MR. BARTLETT: Depending on how soon you want them.  
4 If you want them hopefully by 11:30 you would have them.

5 MR. FOX: If we go off to eat something, be back by  
6 11:30.

7 THE COURT: So she can give them to you, I want to  
8 give them to you just as soon as they're ready. I don't see a  
9 whole lot of change, we have discussed all that. And of  
10 course considering the exceptions to the ones you are  
11 recommending, so I don't think there's going to be much change  
12 in what you are doing. I just want you to have them and I  
13 like to read the instructions first so you can take those  
14 instructions and make your argument, if you want, to use them  
15 or refer to them in some way.

16 MR. FOX: Okay, 11:30.

17 MR. BLOOM: Two questions about the closing. Have  
18 you decided about the length of the closing?

19 THE COURT: I think, Mr. Bartlett and Mr. Friedman  
20 mentioned something, 2 1/2 hours.

21 MR. BARTLETT: Yes.

22 THE COURT: It seems to me, I don't know the need for  
23 all of that, but I would say two hours would be a round  
24 figure. That would in my mind give you ample time to conclude  
25 this matter and conclude it today.

1        Now, if I go beyond 4:30 to do this, I guess I will do  
2 that. All I am asking you, not to exceed.

3        Sometimes folks like to talk until they run out of  
4 whatever, breath, and all those kind of things. I am asking  
5 you not to do that because you've been living with this case,  
6 and I think you can get to the gist of it from what I  
7 understand the primary issue should be, some discussion about  
8 the definition of the device and the rest is Ms. Waters had  
9 nothing to do with this and what would indicate that kind of  
10 thing.

11        So it seems like those two issues are really the meat  
12 issues you want to say about this case, this case is going to  
13 turn on that, believability, credibility.

14        MR. BLOOM: Sure. I have one logistical question. I  
15 assume you do not allow, if the jury wants read back, I assume  
16 you don't allow that.

17        THE COURT: I won't give them read backs and I am not  
18 going to give them a transcript. I am going to summarize it  
19 the way I have said in the instruction and you will be getting  
20 a final packet. And you should have those shortly.

21        MR. FOX: Two very brief things, the record should  
22 reflect that I think it was at 8:45, one page from A-45 had  
23 been admitted, we've marked it as A-45A. So the remaining  
24 pages from that exhibit, I didn't offer them. The record  
25 should reflect one page from A-45.

1 THE COURT: Any issue with this?

2 MR. BARTLETT: No.

3 MR. FOX: The other is I am moving to dismiss all  
4 counts against Ms. Waters based upon insufficiency of the  
5 evidence.

6 THE COURT: I have already ruled on that.

7 MR. FOX: We did that at half-time; I am making it  
8 again.

9 THE COURT: The record will reflect that.

10 MR. BARTLETT: I don't think we are going to exceed  
11 two hours. This has been a long trial and an important case,  
12 and I would ask the Court for some flexibility with regard to  
13 length. I am not going to be repeating myself. I have tried  
14 to organize it as succinctly as possible. But I also don't  
15 want to be jammed on time. So I will try to make every  
16 effort. We do have both closing argument and rebuttal.  
17 Getting both of those within two hours is going to be tight.

18 THE COURT: I am looking at it this way. If we have  
19 this jury back here at noon and we are all ready to go, they  
20 should be instructed by 12:30. And I would say your argument  
21 would start at 12:30. That takes you two hours, 1:30, 2:30.  
22 And then 2:30, 3:30, 4:30 with Mr. Bloom, and that would get  
23 us out of here around 4:30.

24 I will add 15 minutes to each of you so we are out of here  
25 at least by 5:00.

1 I don't want it to be disjointed. I want the jury to get  
2 it. Now, understand -- it is my understanding from what  
3 Mr. Friedman was saying, that would include your rebuttal.

4 MR. FRIEDMAN: It would, the total we are talking  
5 about.

6 THE COURT: So that's why I say, give you 2 hours 15  
7 minutes, at the outside.

8 I am not asking you to use it all up. I keep saying that.  
9 Not to exceed. I think that's long enough. You have been  
10 living with this case and you know your positions, you've been  
11 pulling these Exhibits like you've got them on a rotary or  
12 something. I don't see any more than that. But it's got to  
13 come to an end and that's the way I am going to bring it to an  
14 end, so I will give you equal time.

15 The 15 minutes I have added for you I am assuming will be  
16 in the rebuttal area. We'll be in recess. If you don't leave  
17 right now I will find out where the instructions are. If they  
18 are not ready right now you can go get your sandwich and come  
19 back.

20 MR. FOX: Thank you.

21 MR. BARTLETT: Thank you.

22 THE CLERK: All rise, Court is in recess.

23 (Luncheon recess.)

24 (Jury not present.)

25 THE COURT: All right, you may be seated.

1 I understand there was one instruction the government  
2 wanted to speak to.

3 MR. BARTLETT: Yes, Your Honor. With regard to  
4 Instruction 13a which deals with Robert Corrina, it indicates  
5 that Robert Corrina, a witness, has lied under oath on a prior  
6 occasion. I believe that's a determination for the jury, Your  
7 Honor.

8 Mr. Corrina testified that he did go to the Grand Jury and  
9 did not indicate he had rented a car. He also testified that  
10 he had not remembered renting that car until he actually saw  
11 the records later.

12 The defense is perfectly capable of arguing that's a lie,  
13 but I think whether or not Mr. Corrina's testimony is  
14 believable is a matter for the jury. You are basically  
15 directing the jury to not believe Mr. Corrina on this very  
16 critical matter, and I think that's a matter for the jury's  
17 determination.

18 He indicated that he did not remember the car at the Grand  
19 Jury. It wasn't a lie. It was an honest mistake on his part.  
20 That was his testimony.

21 MR. FOX: Your Honor, I believe that he testified  
22 that he lied to the Grand Jury. He tried to rationalize it,  
23 but he didn't tell them the truth.

24 THE COURT: I guess the issue becomes, is this a  
25 proper way to phrase it. Did he say one thing before the



1 Grand Jury and something else at another time. And you can  
2 characterize it anyway you want to.

3 What I think the objection is, you are saying I am telling  
4 this jury that he did in fact lie.

5 MR. BARTLETT: Right. That's for their  
6 determination.

7 MR. FOX: Your Honor, I think the evidence is that he  
8 did lie. I don't think there's much of a dispute about it.  
9 Whether he intentionally lied, they can argue he didn't  
10 intentionally lie.

11 THE COURT: Well, you can argue it either way about  
12 what I said, too. I am talking about how the instruction  
13 should read to the jury.

14 MR. BARTLETT: This is simply, exactly the type of  
15 matter that a jury is called to determine. He says one thing,  
16 they want to argue it different. It is a factual  
17 determination for the jury.

18 MR. FOX: This is not state court where the Court is  
19 prohibited from commenting on the evidence. You are entitled  
20 to tell the jury --

21 THE COURT: I don't want to comment on the evidence.  
22 I want you guys to argue that.

23 Let me take a brief recess here.

24 THE CLERK: All rise, Court is in recess.

25 (Brief recess.)

1 THE COURT: You may be seated.

2 What I have decided to do is strike that instruction, take  
3 it out, because I feel, when I look at this, the other  
4 instructions talk about credibility of witnesses and things  
5 you should look at. I think it gives you a right to argue  
6 from each side without it being considered a comment by the  
7 Court.

8 I am taking it out. The evidence is there; you can argue  
9 from what these folks heard.

10 Okay. The exceptions and all of the other matters, in  
11 terms of what you offered, are not there. The record has been  
12 made, and you can identify them for the record.

13 MR. FOX: Sure. For all the reasons I stated  
14 previously, the defense would except to giving of Instruction  
15 No. 3. Instruction No. 5.

16 THE COURT: You are speaking of your proposed?

17 MR. FOX: These are of the Court's instructions, Your  
18 Honor. Of the Court's instructions, these are the  
19 instructions I am excepting to: 3, 5.

20 THE COURT: Okay, 3, 5.

21 MR. FOX: On 13, Your Honor, I had told Ms. Minor,  
22 and she related this back to the Court, I am asking that the  
23 phrase "You have heard testimony from witnesses who are  
24 alleged to have been accomplices," I would ask that that  
25 clause be inserted on instruction 13. I understand that the

1 Court has denied that.

2 THE COURT: Yes. You made the record. I am going to  
3 leave that instruction the way it is.

4 MR. FOX: We would except to No. 16, No. 18, No. 19,  
5 No. 20, No. 21, No. 22, No. 23, No. 24, No. 25, No. 26, No.  
6 27, No. 29, for all the reasons I stated earlier.

7 With regard to the proposed instructions that we proposed  
8 that the Court is not giving, I object and except to the  
9 failure to give the complete Defendant's Proposed Instruction  
10 No. 3. I understand the Court gave part of that instruction,  
11 but for the record, I would except to the failure to give the  
12 full one.

13 THE COURT: Your No. 3?

14 MR. FOX: Right.

15 The failure to give Defense Proposed Instruction No. 9.

16 The failure to give Defendant's Proposed Instruction No.  
17 10.

18 The failure to give Defendant's Proposed Instruction No.  
19 11.

20 The failure to give Defendant's Proposed Instruction No.  
21 12.

22 Defendant's Proposed Instruction No. 14, we except to the  
23 failure to give that.

24 The failure to give Defendant's Proposed Instruction No.  
25 15.

1       The failure to give Defendant's Proposed Instruction No.  
2 16.

3       The failure to give Defendant's Proposed Instruction No.  
4 17 and 18 and 19 and 20, 21 and 22.

5       We except to the failure of the Court to give those.

6       Of our supplemental instructions, the main one is the one  
7 I filed today about the missing witness. It's not numbered.  
8 It's the witness available to the prosecution who was not  
9 produced, and we would except to the failure to give that.

10       We would except to the Court's failure to give our  
11 Proposed Instruction No. 23 on Robert Corrina, the one you  
12 just took out.

13               THE COURT: All right.

14               MR. FOX: The Court did incorporate some of our  
15 suggestions on the other two instructions, proposed  
16 instructions that I filed two days ago, 22 and 24, and the  
17 Court incorporated some of those suggestions. I except to the  
18 failure to give those as we proposed them.

19               THE COURT: All right. Are we ready to argue the  
20 case?

21               MR. BARTLETT: We are, Your Honor.

22               THE COURT: All right. We will bring the jury in and  
23 instruct them.

24       I am sure, because of the length of the argument, I will  
25 take a break after the government has argued it, about ten,

1 fifteen minutes, then go into yours.

2 MR. FOX: Your Honor, without meaning any disrespect,  
3 I am going to step out for a second while you are instructing  
4 the jury, if that's okay?

5 THE COURT: That is up to you and your client.

6 MR. FOX: Mr. Bloom will be here. I need to step out  
7 for a moment.

8 THE COURT: Sure. I mean, that's fine with me.

9 (Jury present.)

10 THE COURT: All right. You may be seated.

11 Both sides have rested in this case, so members of the  
12 jury, you have heard all of the evidence, so it is my duty to  
13 instruct you on the law which applies to this case. A copy of  
14 these instructions will be available in the jury room for you  
15 to consult.

16 It is your duty to find the facts from all the evidence in  
17 the case. To those facts you will apply the law as I give it  
18 to you. You must follow the law as I give it to you whether  
19 you agree with it or not. And you must not be influenced by  
20 any personal likes or dislikes, opinions, prejudices, or  
21 sympathy. That means that you must decide the case solely on  
22 the evidence before you. You will recall that you took an  
23 oath promising to do so at the beginning of the case.

24 In following my instructions, you must follow all of them  
25 and not single out some and ignore others; they are all

1 equally important. You must not read into these instructions  
2 or into anything the Court may have said or done any  
3 suggestion as to what verdict you should return -- that is a  
4 matter entirely up to you.

5 This is a criminal case brought by the United States  
6 Government. The government accuses the defendant, Briana  
7 Waters, of five crimes. The charges against the defendant are  
8 contained in an indictment.

9 Count 1 of the indictment charges that the defendant  
10 conspired to commit the crimes of arson, using destructive  
11 devices during crimes of violence, and making unregistered  
12 destructive devices.

13 Count 4 of the indictment charges that, on or about May  
14 20, 2001, the defendant possessed, or aided and abetted the  
15 possession of, an unregistered destructive device.

16 Count 5 of the indictment charges that, on or about May  
17 21, 2001, the defendant committed, or aided and abetted, the  
18 arson of the Center for Urban Horticulture at the University  
19 of Washington, a building used in interstate commerce or in  
20 activity affecting interstate commerce.

21 Count 6 of the indictment charges that, on or about May  
22 21, 2001, the defendant used, or aided and abetted the use of,  
23 a destructive device during the arson of the Center for Urban  
24 Horticulture at the University of Washington.

25 Count 7 of the indictment charges that, on or about May

1 21, 2001, the defendant committed, or aided and abetted, the  
2 arson of the Center for Urban Horticulture at the University  
3 of Washington, a building owned or possessed by an institution  
4 receiving federal financial assistance. This is the same  
5 arson charged in Count 5. The difference is that Count 7  
6 alleges a different basis for jurisdiction. Count 5 alleges  
7 that the building was used in activity affecting interstate  
8 commerce, and Count 7 alleges that the building belonged to an  
9 institution receiving federal financial assistance.

10 The indictment is simply a description of the charges made  
11 by the government against the defendant. The indictment is  
12 not evidence. The defendant has pleaded not guilty to the  
13 charges. The defendant is presumed to be innocent and does  
14 not have to testify or present any evidence to prove  
15 innocence. The government has the burden of proving every  
16 element of the charges beyond a reasonable doubt.

17 Proof beyond a reasonable doubt is proof that leaves you  
18 firmly convinced that the defendant is guilty. It is not  
19 required that the government prove guilt beyond all possible  
20 doubt.

21 A reasonable doubt is a doubt based upon reason and common  
22 sense, and is not based purely on speculation. It may arise  
23 from a careful and impartial consideration of all the  
24 evidence, or from lack of evidence.

25 If after a careful and impartial consideration of all the

1 evidence, you are not convinced beyond a reasonable doubt that  
2 the defendant is guilty, it is your duty to find the defendant  
3 not guilty. On the other hand, if after a careful and  
4 impartial consideration of all the evidence, you are convinced  
5 beyond a reasonable doubt that the defendant is guilty, it is  
6 your duty to find the defendant guilty.

7 The evidence from which you are to decide what the facts  
8 are consists of:

- 9 (1) the sworn testimony of witnesses;  
10 (2) the exhibits which have been received into evidence;  
11 and  
12 (3) any facts to which all the lawyers have agreed or  
13 stipulated.

14 You have heard evidence of the defendant's character for  
15 non-violence. In deciding this case, you should consider that  
16 evidence together with and in the same manner as all the other  
17 evidence in the case.

18 The defendant has testified. You should treat this  
19 testimony just as you would the testimony of any other  
20 witness.

21 In reaching your verdict you may consider only the  
22 testimony and exhibits received into evidence. Certain things  
23 are not evidence and you may not consider them in deciding  
24 what the facts are. I will list them for you:

- 25 1. Arguments and statements by lawyers are not evidence.



1 The lawyers are not witnesses. What they have said in their  
2 opening statements, closing argument and at other times is  
3 intended to help you interpret the evidence, but it is not  
4 evidence. If the facts as you remember them differ from the  
5 way the lawyers have stated them, your memory of them  
6 controls.

7 2. Questions and objections by lawyers are not evidence.  
8 Attorneys have a duty to their clients to object when they  
9 believe a question is improper under the rules of evidence.  
10 You should not be influenced by the question, the objection or  
11 by the Court's ruling on it.

12 3. Testimony that has been excluded or stricken, or that  
13 you have been instructed to disregard, is not evidence and  
14 must not be considered. In addition, some testimony or an  
15 exhibit was received only for a limited purpose; where I have  
16 given a limiting instruction, you must follow it.

17 4. Anything you have seen or heard when the Court was not  
18 in session is not evidence. You are to decide the case solely  
19 on the evidence received at the trial.

20 Evidence may be direct or circumstantial. Direct evidence  
21 is direct proof of a fact, such as testimony of an eyewitness.  
22 Circumstantial evidence is indirect; that is proof of a chain  
23 of facts from which you could find that another fact exists,  
24 even though it has not been proved directly. You are to  
25 consider both kinds of evidence. The law permits you to give

1 equal weight to both, but it is for you to decide how much  
2 weight to give to any evidence.

3 In deciding the facts in this case, you may have to decide  
4 which testimony to believe and which testimony not to believe.  
5 You may believe everything a witness says, or part of it, or  
6 none of it.

7 In considering the testimony of any witness, you may take  
8 into account:

- 9 1. the opportunity and ability of the witness to see or  
10 hear or know the things testified to;
- 11 2. the witness's memory;
- 12 3. the witness's manner while testifying;
- 13 4. the witness's interest in the outcome of the case and  
14 any bias or prejudice;
- 15 5. whether other evidence contradicted the witness's  
16 testimony;
- 17 6. the reasonableness of the witness's testimony in light  
18 of all the evidence; and
- 19 7. any other factors that bear on believability.

20 The weight of the evidence as to a fact does not  
21 necessarily depend on the number of witnesses who testify.

22 You have heard testimony from persons who, because of  
23 education or experience, are permitted to state opinions and  
24 the reasons for their opinions.

25 Opinion testimony should be judged just like any other

1 testimony. You may accept it or reject it, and give it as  
2 much weight as you think it deserves, considering the witness'  
3 education and experience, the reasons given for the opinion,  
4 and all the other evidence in the case.

5 You are here only to determine whether the defendant is  
6 guilty or not guilty of the charges in the indictment. Your  
7 determination must be made only from the evidence in the case.  
8 The defendant is not on trial for any conduct or offense not  
9 charged in the indictment. You should consider evidence about  
10 the acts, statements, and intentions of others, or evidence  
11 about other acts of the defendant, only as they relate to this  
12 charge against this defendant.

13 You have heard evidence that Briana Waters has engaged in  
14 protests and other types of freedom of speech. You are  
15 instructed that the First Amendment of the United States  
16 Constitution protects the right of Americans to speak out  
17 publicly and to protest. You are instructed that you may not  
18 convict Briana Waters of any crime simply because she  
19 exercised her First Amendment rights.

20 A separate crime is charged against the defendant in each  
21 count. You must decide each count separately. Your verdict  
22 on one count should not control your verdict on any other  
23 count.

24 A person has possession of something if the person knows  
25 of its presence and has physical control of it, or knows of

1 its presence and has the power and intention to control it.  
2 More than one person can be in possession of something if each  
3 knows of its presence and has the power and intention to  
4 control it.

5       You have heard testimony from witnesses who were  
6 accomplices and who entered into plea agreements under which  
7 they hoped or hope to receive lighter sentences in return for  
8 their cooperation, and who pleaded guilty to felony crimes  
9 arising out of the same events for which the defendant is on  
10 trial. An accomplice is one who voluntarily and intentionally  
11 joins with another person in committing a crime. These guilty  
12 pleas are not evidence against the defendant, and you may  
13 consider them only in determining the witness' believability.

14       In evaluating these witnesses' testimony, you should  
15 consider the extent to which or whether the witnesses'  
16 testimony may have been influenced by any of these factors.  
17 In addition, you should examine the witnesses' testimony with  
18 greater caution than that of other witnesses.

19       Certain charts and summaries have been shown to you.  
20 Charts and summaries are only as good as the underlying  
21 supporting material. You should, therefore, give them only  
22 such weight as you think the underlying material deserves.

23       The indictment charges that the offenses occurred "on or  
24 about" a certain date or during a period of time. The proof  
25 need not establish with certainty the exact date of the

1 alleged offenses. It is sufficient if the evidence in the  
2 case establishes beyond a reasonable doubt that an offense was  
3 committed on a date reasonably near the date or time alleged.

4 The defendant is charged in Count 1 of the indictment with  
5 the crime of conspiracy in violation of Section 371 of Title  
6 18 of the United States Code. Specifically, the defendant is  
7 charged with conspiring to commit arson, to use destructive  
8 devices during a crime of violence, and to make unregistered  
9 destructive devices. In order for the defendant to be found  
10 guilty of this charge, the government must prove each of the  
11 follow elements beyond a reasonable doubt:

12 First, at some time between 1996 and October 2001, there  
13 was an agreement between two or more persons to commit at  
14 least one crime as charged in the indictment;

15 Second, the defendant joined the conspiracy knowing of at  
16 least one of its objects and intending to help accomplish it;  
17 and

18 Third, at some time between May 11, 2001, and October  
19 2001, one of the members of the conspiracy performed at least  
20 one overt act for the purpose of carrying out the conspiracy,  
21 with all of you agreeing on a particular overt act that you  
22 find was committed.

23 I shall discuss with you briefly the law relating to each  
24 of these elements.

25 A conspiracy is a kind of criminal partnership -- an

1 agreement of two or more persons to commit one or more crimes.  
2 The crime of conspiracy is the agreement to do something  
3 unlawful; it does not matter whether the crime agreed upon was  
4 committed.

5 For a conspiracy to have existed, it is not necessary that  
6 the conspirators made a formal agreement or that they agreed  
7 on every detail of the conspiracy. It is not enough, however,  
8 that they simply met, discussed matters of common interest,  
9 acted in similar ways, or perhaps helped one another. You  
10 must find that there was a plan to commit at least one of the  
11 crimes alleged in the indictment as an object of the  
12 conspiracy (that is, arson, using destructive devices during a  
13 crime of violence, and making unregistered destructive  
14 devices), with all of you agreeing as to the particular crime  
15 which the conspirators agreed to commit.

16 One becomes a member of a conspiracy by willfully  
17 participating in the unlawful plan with the intent to advance  
18 or further some object or purpose of the conspiracy, even  
19 though the person does not have full knowledge of all the  
20 details of the conspiracy. Furthermore, one who willfully  
21 joins an existing conspiracy is as responsible for it as the  
22 originators. On the other hand, one who has no knowledge of a  
23 conspiracy, but happens to act in a way which furthers some  
24 object or purpose of the conspiracy, does not thereby become a  
25 conspirator. Similarly, a person does not become a

1 conspirator merely by associating with one or more persons who  
2 are conspirators, nor merely by knowing that a conspiracy  
3 exists.

4 An overt act does not itself have to be unlawful. A  
5 lawful act may be an element of a conspiracy if it was done  
6 for the purpose of carrying out the conspiracy. The  
7 government is not required to prove that a defendant  
8 personally did one of the overt acts.

9 You must decide whether the conspiracy charged in the  
10 indictment existed, and, if it did, who at least some of its  
11 members were. If you find the conspiracy charged did not  
12 exist, then you must return a not guilty verdict, even though  
13 you may find that some other conspiracy existed. Similarly,  
14 if you find the defendant was not a member of the charged  
15 conspiracy, then you must find the defendant not guilty, even  
16 though the defendant may have been a member of some other  
17 conspiracy.

18 A conspiracy may continue for a long period of time and  
19 may include the performance of many transactions. It is not  
20 necessary that all members of the conspiracy join it at the  
21 same time, and one may become a member of a conspiracy without  
22 full knowledge of all the details of the unlawful scheme or  
23 the names, identities, or locations of all of the other  
24 members.

25 Even though a defendant did not directly conspire with

1 other conspirators in the overall scheme, the defendant has,  
2 in effect, agreed to participate in the conspiracy if it is  
3 proved beyond a reasonable doubt that:

4 1. the defendant directly conspired with one or more  
5 conspirators to carry out at least one of the objects of the  
6 conspiracy,

7 2. the defendant knew or had reason to know that other  
8 conspirators were involved with those with whom the defendant  
9 directly conspired, and

10 3. the defendant had reason to believe that whatever  
11 benefits the defendant might get from the conspiracy were  
12 probably dependent upon the success of the entire venture.

13 It is no defense that a person's participation in a  
14 conspiracy was minor or for a short period of time.

15 The defendant is charged in Count 4 of the indictment with  
16 possessing an unregistered destructive device (incendiary  
17 bomb), in violation of Section 5681(d) of Title 26 of the  
18 United States Code. In order for the defendant to be found  
19 guilty of this crime, the government must prove each of the  
20 following elements beyond a reasonable doubt:

21 First, on or about May 20, 2001, the defendant knowingly  
22 possessed, or aided and abetted another person's possession  
23 of, a destructive device (incendiary bomb); and

24 Second, the destructive device (incendiary bomb) was not  
25 registered to the defendant or the other person in the



1 National Firearms Registration and Transfer Record;

2 An act is done knowingly if the defendant is aware of the  
3 act and does not act through ignorance, mistake, or accident.  
4 The government is not required to prove that the defendant  
5 knew that his acts or omissions were unlawful. You may  
6 consider evidence of the defendant's words, acts, or  
7 omissions, along with all the other evidence, in deciding  
8 whether the defendant acted knowingly.

9 The term "destructive device" means --

10 (A) any explosive, incendiary, or poison gas --

11 (i) bomb,

12 (ii) grenade,

13 (iii) rocket having a propellant charge of more than  
14 four ounces,

15 (iv) missile having an explosive or incendiary  
16 charge of more than one-quarter ounce,

17 (v) mine, or

18 (vi) device similar to any of the devices described  
19 in the preceding clauses.

20 A destructive device includes any incendiary device, be it  
21 a military-type weapon or homemade incendiary weapon, the  
22 function of which is to ignite and destroy property. Although  
23 it may cause an explosion, an incendiary device does not have  
24 to cause an explosion in order to be considered an incendiary  
25 bomb. Any device containing combustible material capable of

1 producing sufficient heat to destroy property of any kind and  
2 having components designed to ignite that combustible material  
3 is an incendiary bomb. The term incendiary bomb does not  
4 include any device which is not designed as a weapon for the  
5 destruction of property.

6 The defendant may be found guilty of the crimes of  
7 possessing an unregistered destructive device, arson, and  
8 using a destructive device during a crime of violence even if  
9 the defendant personally did not commit the act or acts  
10 constituting the crime but aided and abetted in their  
11 commission. To prove a defendant guilty of aiding and  
12 abetting, the government must prove beyond a reasonable doubt:

13 First, that the crime charged was committed by another  
14 person;

15 Second, the defendant knowingly and intentionally aided,  
16 counseled, commanded, induced, or procured that person to  
17 commit the crime; and

18 Third, the defendant acted before the crime was completed.

19 It is not enough that the defendant merely associated with  
20 the person committing the crimes, or unknowingly or  
21 unintentionally did things that were helpful to that person,  
22 or was present at the scene of the crime.

23 The evidence must show beyond a reasonable doubt that the  
24 defendant acted with the knowledge and intention of helping  
25 that person commit the crime.

1       The government is not required to prove precisely which  
2 person actually committed the crime and which person aided and  
3 abetted.

4       The defendant is charged in Count 5 of the indictment with  
5 committing arson of a building used in interstate commerce, in  
6 violation of Section 844(i) of Title 18 of the United States  
7 Code. In order for the defendant to be found guilty of this  
8 crime, the government must prove each of the following  
9 elements beyond a reasonable doubt:

10       First, the defendant damaged or destroyed, or aided and  
11 abetted in damaging or destroying, a building;

12       Second, the defendant or the person whom defendant aided  
13 and abetted used fire to do so;

14       Third, the defendant acted maliciously; and

15       Fourth, the building was used in interstate commerce or in  
16 activity affecting interstate commerce.

17       In order to find that a defendant acts maliciously, you  
18 must find that the defendant intends that the building will be  
19 damaged or destroyed.

20       The defendant is charged in Count 6 of the indictment with  
21 using a destructive device (incendiary bomb) during and in  
22 relation to a crime of violence, in violation of Section  
23 924(c) of Title 18 of the United States Code. In order for  
24 the defendant to be found guilty of that charge, the  
25 government must prove each of the following elements beyond a

1 reasonable doubt:

2 First, the defendant committed, or aided and abetted, the  
3 crime of damaging or destroying by fire a building used in  
4 interstate commerce as charged in Count 5 or a building  
5 belonging to an institution receiving federal financial  
6 assistance as charged in Count 7 of the indictment;

7 Second, the defendant knowingly and intentionally used, or  
8 aided and abetted the use of, a destructive device (incendiary  
9 bomb); and

10 Third, the defendant or the person whom defendant aided  
11 and abetted used the destructive device during and in relation  
12 to the crime of damaging or destroying a building by fire.

13 A person takes action "in relation to the crime" if the  
14 destructive device facilitated or played a role in the crime.

15 The defendant is charged in Count 7 of the indictment with  
16 committing arson of a building belonging to an institution  
17 receiving federal financial assistance, in violation of  
18 Section 844(f) of Title 18 of the United States Code. In  
19 order for the defendant to be found guilty of this crime, the  
20 government must prove each of the following elements beyond a  
21 reasonable doubt:

22 First, the defendant damaged or destroyed, or aided and  
23 abetted in damaging or destroying, a building;

24 Second, the defendant or the person whom defendant aided  
25 and abetted used fire to do so;

1 Third, the defendant act maliciously; and

2 Fourth, the building was owned or possessed by an  
3 institution receiving federal financial assistance.

4 In order to find that a defendant acts maliciously, you  
5 must find that the defendant intends that the building will be  
6 damaged or destroyed.

7 Exhibits 781 through 785 are certificates of the custodian  
8 of the National Firearms Register and Transfer Record. A  
9 certificate is a written statement of facts signed by a public  
10 official. The certificates state that the custodian made a  
11 diligent search of the record and found no record of any  
12 destructive device being registered to any of the defendants,  
13 Briana Waters, William Rodgers, Justin Solondz, Lacey  
14 Philabaum, or Jennifer Kolar. From these certificates you  
15 may, but need not, decide that no destructive device was  
16 registered to any of these persons.

17 Your verdict must be based solely on the evidence and on  
18 the law as I have given it to you in these instructions.  
19 However, nothing that I have said or done is intended to  
20 suggest what your verdict should be -- that is entirely for  
21 you to decide.

22 The punishment provided by law for these crimes is for the  
23 Court to decide. You may not consider punishment in deciding  
24 whether the government has proved its case against the  
25 defendant beyond a reasonable doubt.

1       When you begin your deliberations, you should elect one  
2 member of the jury as your presiding juror. That person will  
3 preside over the deliberations and speak for you here in  
4 court.

5       You will then discuss the case with your fellow jurors to  
6 reach agreement if you can do so. Your verdict, whether  
7 guilty or not guilty, must be unanimous.

8       Each of you must decide the case for yourself, but you  
9 should do so only after you have considered all the evidence,  
10 discussed it fully with the other jurors, and listened to the  
11 views of your fellow jurors.

12       Do not be afraid to change your opinion if the discussion  
13 persuades you that you should. But do not come to a decision  
14 simply because other jurors think it is right.

15       It is important that you attempt to reach a unanimous  
16 verdict but, of course, only if each of you can do so after  
17 having made your own conscientious decision. Do not change an  
18 honest belief about the weight and effect of the evidence  
19 simply to reach a verdict.

20       If it becomes necessary during your deliberations to  
21 communicate with me, you may send a note through the bailiff,  
22 signed by your presiding juror or by one or more members of  
23 the jury. No member of the jury should ever attempt to  
24 communicate with me except by a signed writing; and I will  
25 communicate with any members of the jury on anything

1 concerning the case only in writing or orally here in open  
2 court. If you do send out a question, the law requires that I  
3 consult with the lawyers before answering it, which will  
4 necessarily take some time. You should continue your  
5 deliberations while waiting for the answer to any question.  
6 Remember that you are not to tell anyone -- including me --  
7 how the jury stands, numerically or otherwise, on the question  
8 of the guilt of the defendant until after you have reached a  
9 unanimous verdict or have been discharged.

10 A verdict form has been prepared for you. After you have  
11 reached unanimous agreement on a verdict, your presiding juror  
12 will fill in the form that has been given to you, sign and  
13 date it, and advise the bailiff that you are ready to return  
14 to the courtroom.

15 With that, and these instructions in the jury room, the  
16 lawyers will now give you their closing summary to assist you  
17 in your duties, and we'll start with the Government first,  
18 then we will hear from the defense.

19 MR. BARTLETT: Trials, at time, can seem to be a very  
20 strange process. You all came in here several weeks ago,  
21 forced to answer a number of questions, some of them personal.  
22 You had to speak before everybody. It seems, I'm sure, to  
23 many of you that randomly people are chosen and let go, and  
24 all of a sudden you are asked to make very important  
25 decisions, but it's not the normal way that you gain facts.

1 Normally, if you were trying to figure out what happened  
2 somewhere, you would have interaction, you would be talking to  
3 people. That's not what happens in this case. Instead, you  
4 come in here, you don't get to ask questions. You are led in  
5 and out at various times, sometimes you have no idea why.

6 At times, this process can distract you from what a trial  
7 is. What a trial is, is very simple. It's a search for the  
8 truth. That's what we are all here for, what happened. We  
9 are here to decide that. We are not here to speculate about  
10 what could have happened, what might have happened.

11 We are not here to wonder about things that aren't in the  
12 record. What we are here to do is very simple: Consider the  
13 testimony from that witness stand, look at the physical  
14 exhibits that have been entered into evidence, and look at the  
15 stipulations.

16 Those are the three pillars that you will use when you go  
17 back to deliberate. That's not my opinion. Judge Burgess  
18 just told you that. Using those three pillars and your common  
19 sense, you will decide what happened.

20 I am going to make arguments over the next, probably what  
21 will seem to be too long a period of time, that I know you  
22 already know. I am going to try to tie pieces of evidence  
23 together with testimony and make points that I know you've  
24 already put in your own mind. It's not because I think I am a  
25 really smart guy. It's because it's my job. That's what the



1 Department of Justice pays me to do, and I am going to do it.

2 I just don't want you to feel like I am trying to insult you.

3 Why are we here? We are here because this Defendant chose  
4 to join a conspiracy with her good friend Bill Rodgers, with  
5 her boyfriend Justin Solondz, with Jennifer Kolar and Lacey  
6 Philabaum, and that conspiracy had a very, very serious aim:  
7 to destroy the Center for Urban Horticulture at the University  
8 of Washington. And they were successful.

9 We are here because this Defendant helped arrange to have  
10 a secure media house at the Evergreen State College the week  
11 before this arson. We are here because this Defendant  
12 provided a clean room where incendiary bombs could be used to  
13 destroy the Center for Urban Horticulture on May 21, 2001.

14 We are here because she obtained a rental car that was  
15 used to transport the core conspirators up to Seattle that was  
16 virtually untraceable. We lucked out. That's why we found  
17 Mr. Corrina.

18 We are here because she chose to sit in the bushes in the  
19 early morning hours of May 21st serving as a lookout for her  
20 co-conspirators as they went down to plant their incendiary  
21 bombs. We are here because she chose to help them all escape,  
22 successfully, for many years.

23 Let's talk about the Government's case. I want to focus  
24 first on Lacey Philabaum. I want to suggest to you what is  
25 obvious. When you go back to deliberate, I want you to think

1 back. It seems like a lot longer than two weeks ago, at least  
2 it does to me, but two weeks ago Lacey Phillabaum came before  
3 you and testified. If you find Lacey Phillabaum a credible  
4 witness, and I suggest to you that there are a ton of reasons  
5 why that is a compelling conclusion that you will all reach,  
6 your job is done. If Lacey Phillabaum is telling the truth,  
7 this Defendant is guilty.

8 Make no mistake about it, there are many criminal trials  
9 where basically you have -- it's kind of a one-witness case,  
10 that's all you have to rely on. Try to remember back, as you  
11 watched her walk into this courtroom, to remember her  
12 demeanor, how she testified, her attitude.

13 Ms. Phillabaum was compelling during direct testimony.  
14 For almost an entire day, she was subjected to  
15 cross-examination, and this cross-examination was aimed at  
16 showing to all of you, all 14 of you, just exactly who Lacey  
17 Phillabaum was. You know what? They were successful. You  
18 got to see exactly who she was. It became abundantly clear  
19 that Ms. Phillabaum provided you with very distinct  
20 descriptions of memories she had and not on others.

21 She indicated during her testimony, during  
22 cross-examination, that she had no ill will toward this  
23 Defendant. In fact, she told you under cross-examination:  
24 "Well, you wouldn't speak to me, would you, Ms. Phillabaum?"  
25 What was her answer? "Actually, I would have. All I wanted

1 was for Briana Waters to be there when I met with you."

2 Think about that. You are Lacey Phyllabaum. You are  
3 framing the Defendant, and your response is: "Well, I will  
4 meet with her, but I want to be face-to-face with the woman I  
5 am framing." Does that make any sense to anybody?

6 "I bear no hostility to Briana. I feel a lot of sympathy  
7 that she's in this situation. I feel sympathy for Justin who  
8 has fled. The decision of how to deal with a crime like this  
9 is heart-breaking and painful, no matter how you choose to  
10 deal with it." Do you remember her speaking those words on  
11 that stand? Do you remember her demeanor, her tone?

12 If she's lying to all of you, then last Sunday the Academy  
13 Awards made a mistake. The award for best actress should have  
14 gone to her rather than the French woman who actually won it.

15 Does Lacey Phyllabaum have a motive to cooperate with us?  
16 Of course she does. She was looking at a 35-year mandatory  
17 minimum sentence. She has a huge -- she has 35 years worth of  
18 motive to cooperate, but that's not really the relevant  
19 question, is it?

20 What does she tell you? "I care greatly about doing the  
21 minimum amount of time in prison possible, but I will tell you  
22 that if there was any risk, it was that I would have a  
23 convenient memory lapse and not remember Briana being there.  
24 There have been days when I thought I would kill myself before  
25 I would testify against her. I am not telling the truth

1 because I owe it to the prosecution. I am telling the truth  
2 because I owe it to the victims of the crime."

3 She has a motive to cooperate. That is a given, but think  
4 about the most relevant question. What motive does she  
5 possibly have to come in here and fabricate a false accusation  
6 against anyone?

7 Wouldn't that be the worst possible thing you could do --  
8 you would be better off saying nothing -- to come in here and  
9 lie and try to frame an innocent person? Because you know  
10 what's going to happen. You give a name, and Special Agent  
11 Halla and the other FBI agents are going to go out and  
12 investigate. And if you accuse Jane Smith of being the  
13 lookout and then go and find out that Jane Smith is actually  
14 in Chicago that weekend, then you are in worse shape, right?

15 Remember the circumstances, the exact circumstances, as to  
16 how Lacey Philabaum came to cooperate with us. Do you  
17 remember the story she told? And actually, it came out better  
18 in cross-examination than it did in direct.

19 What happens -- we are talking mid February. On February  
20 16th and February 17, 2001, a Thursday and a Friday, Andrew  
21 Friedman and Ted Halla go down to Eugene. Why? Because they  
22 are going down to interview people that have been indicted in  
23 Eugene and are starting to cooperate, Chelsea Gerlach and  
24 Suzanne Savoi e.

25 They go down, they spend two days, they talk to them.

1 They get done, they reach some conclusions, and over that  
2 weekend, Special Agent Halla told you, he was basically trying  
3 to get ahold of either Waters or Philabaum. He had a number  
4 for Mr. Philabaum, so he calls Mr. Philabaum sometime over  
5 that weekend and says, in substance: "Your daughter is in  
6 trouble. We really want her to come in and cooperate, and we  
7 hope she does." The dad says "Well, is it civil or criminal?"  
8 "It's criminal." Okay, that's it.

9 Ms. Philabaum describes coming to Seattle, and actually  
10 not even having her mind made up at that point in time as to  
11 what she's going to do. She comes to Seattle, she meets with  
12 her attorney, Mr. Offenbecher, but that isn't the key fact  
13 that she comes up with.

14 She tells you, "I thought they would tell me something  
15 about it beforehand, but they didn't," referring to us.  
16 "Immediately prior to going to the United States Attorney's  
17 Office, I was told by Lauren Regan" -- that woman that  
18 Mr. Bloom pointed out here in the front row -- "that Chelsea  
19 Gerlach and Suzanne Savoie were cooperating, and in my mind,  
20 the truth was coming out; it was time to be truthful."

21 It wasn't anything we did that pushed her to cooperate.  
22 It was Ms. Regan providing her what turned out to be accurate  
23 information that two of the individuals involved in the  
24 overall conspiracy were cooperating. Now, she doesn't know  
25 what they are cooperating about, but obviously in her mind

1 she's anticipating the worst. So she comes in and spills the  
2 beans.

3 Ms. Phillabaum doesn't know that Justin Solondz is out of  
4 the country. She does not know -- clearly she does not know  
5 that Jennifer Kolar has not named her as one of her  
6 co-conspirators. There was no deal prior to this meeting.  
7 She came in and gave a proffer. Remember that letter? There  
8 was a little confusion about that.

9 To put this in perspective, a proffer is kind of a little  
10 bit of a dance. There's no agreement at this point in time.  
11 Somebody is going to come in and talk to us because they know  
12 they are in trouble, and they are hoping to get a break. It's  
13 not a confession. If it all doesn't work out and an agreement  
14 isn't eventually reached, you can see in the letter we can't  
15 use their statements against them. So if Ms. Phillabaum had  
16 come in and talked to us on February 21st and later said "Gee,  
17 I don't like the plea offer," and she went to trial, I  
18 couldn't bring up those statements and say "Oh, hey, when you  
19 came in on the 21st, you already confessed to that."

20 We could use it to follow leads; we could do those types  
21 of things, but basically it was the start of a process that  
22 eventually ended up in her reaching a plea agreement.

23 What happens on February 21st? She tells us a ton of  
24 facts. Very critical information. Even more important,  
25 virtually everything that she tells us in that interview on

1 February 21st is confirmed by physical evidence we are able to  
2 later recover.

3 Why do we focus so much on physical evidence, and why do I  
4 talk about that so much during this summation? People can  
5 lie. People can misremember. But physical evidence stands  
6 there. It's the pillars that you can always look for. You  
7 are always looking for, did somebody else say a similar thing?  
8 Is there a record that shows that, in fact, this is what  
9 really happened?

10 Think about Lacey Phillabaum's testimony. She says she  
11 comes in and describes, first of all, a meeting at the  
12 Evergreen State College on the weekend prior to the arson.  
13 Why do you know that that, in fact, is accurate? Because you  
14 have Jen Kolar's calendar, Government's Exhibit 617C, and what  
15 do you see, looking at the weekend prior to the arson? It's  
16 very hard to see, but if look at the 12th right there, you see  
17 a notation for "library."

18 On that initial interview, Ms. Phillabaum describes that  
19 there were incendiary bombs built in the house, the little  
20 garage behind where Briana Waters was living. How do you know  
21 that's true? Leap ahead to one of the next interviews, 1013C.  
22 We don't know where Briana Waters was living, and we are  
23 trying to find out. So on March 30th, we bring Lacey  
24 Phillabaum in and we show her some pictures: "Hey, is this  
25 the house where Lacey Phillabaum was? Is this the house where

1 Lacey -- excuse me, Briana Waters was? No, no, no." So she  
2 flips this photograph over that we showed her and she draws --  
3 this is the location where it was. There's a house on the  
4 front, and there's a little garage behind and there's a school  
5 back here. You know what? When we go over to Conger Street,  
6 guess what we find? Exactly this.

7 She describes Justin Solondz taking this Defendant and  
8 Ms. Phillabaum back to the clean room to show the incendiary  
9 bombs that he's building. We search Justin Solondz' cabin and  
10 what do we find? Of all the obscure things to find, multiple  
11 hair nets and shower caps in a men's clothing room. What's  
12 that there for? It's exactly what you would use if in fact  
13 you were working in a clean room.

14 She tells us that Justin Solondz bragged about coming up  
15 with a new device, different than the other ones, that he was  
16 using a bladder for gas and Tupperware rather than buckets.  
17 Now, keep in mind, when she's telling us this on February  
18 21st, nobody has gotten any discovery in this case, nobody's  
19 been charged, Mr. Rodgers has already committed suicide, so  
20 it's not like: Oh, these reports are floating all around.

21 But, this is what she tells us, and lo and behold you have  
22 Don Sachtleben come in and talk to you about what's recovered  
23 in Toby Bradshaw's office on the morning of May 21st and 22nd.  
24 What is it? Well, you've got the Tupperware bag right here,  
25 and then you have the bladder. In fact, you heard all the



1 descriptions from John Comery about all the other arsons that  
2 we heard about in this case. This is a new device. This is a  
3 new design, and it is exactly what Lacey Phillabaum described  
4 on February 21st.

5 Justin was talking about the incendiary bomb devices and  
6 the improvements in the design that he made which involved  
7 using bags and water bladders, like you would use if you were  
8 running or something, instead of what had been used before,  
9 which I believe was buckets. That was her testimony.

10 She describes a meeting in a field where all the  
11 co-conspirators got together and they all pledged that they  
12 would not talk, that they would remain silent if arrested.  
13 What happens when we search Bill Rodgers' house? We find his  
14 new guide on how to commit arsons and crimes. If you look at  
15 515I, there's a page that specifically talks about how do you  
16 do an arson. What is on the pre-action checklist? At the  
17 bottom here, "confirm that each person pledges to remain  
18 silent if arrested." Physical evidence corroborating exactly  
19 what Lacey Phillabaum tells us on February 21st.

20 Most critically, Lacey Phillabaum tells us that Briana  
21 Waters provided the rental car for this arson and, in fact,  
22 she used her aunt to get it. Who was the only blood relative  
23 in the immediate area of this Defendant's? Robert Corrina.  
24 He rents one car that entire year. If you look at the rental  
25 records, 771, there's Mr. Corrina's car for the exact time

1 period of this arson. Physical records corroborating  
2 Ms. Phillabaum.

3 She borrows this car on the night of the arson. She pays  
4 him back in cash. In fact, you know that's true because you  
5 have Exhibit 774, the cash deposit. Once again, the only cash  
6 deposit into Mr. Corrina's account for an eight-month period  
7 in 2001. The entire records that we were able to obtain.

8 Pull up the rental records. Look at the mileage. 237  
9 miles. Is this a car she used driving around Olympia? No,  
10 this is a car used on a trip.

11 Ladies and gentlemen, that isn't proof beyond a reasonable  
12 doubt. That's proof beyond all doubt. There is no possible  
13 explanation as to how Lacey Phillabaum could know that this  
14 Defendant's cousin rented a car one time in 2001 that very  
15 weekend, unless that's exactly how it happened.

16 Let's talk about Robert Corrina. They are first cousins.  
17 They are good friends. They went to high school together for  
18 a year. She comes out to the West Coast, she swings by  
19 Greeley to see him. He moves out to Olympia. They move in  
20 together. She lives at his house for various periods of time.  
21 They are close. He watches her back.

22 They want you to believe that Robert Corrina will throw  
23 all of that away and come in here and commit perjury. Think  
24 about it. It's not just perjury. He didn't just come in and  
25 say: "Oh, this Defendant rented the car from me." He gave

1 you a fairly detailed story, right? So they want you to  
2 believe that not only is he committing perjury and framing his  
3 first cousin that's been one of his good friends his entire  
4 life, but he's going way over the top. He's just creating  
5 stuff whole cloth all over the place.

6 "There's an implication in there that I am keeping myself  
7 out of jail, which implies that I have been threatened in some  
8 way. If I had been threatened in any way, I would neither  
9 cooperate nor capitulate in any way, and if my wife or son had  
10 been threatened in any way, or I perceive it would be the  
11 opposite of cooperation, I would become enraged. So I am  
12 telling the truth. My lawyer asked me to tell the truth.  
13 Briana knows I am telling the truth."

14 Do you remember him telling you that from the stand? Do  
15 you think he's making that up? Do you think that's another  
16 big act here, a big super conspiracy, somebody in here framing  
17 Briana Waters?

18 Mr. Corrina would be critical in this trial for just one  
19 thing -- just to come in and admit the rental records, and  
20 that would be a critical witness. But think about all the  
21 other things he does in this case. Look at his bank account.  
22 Is this a person -- a family, he and his wife and their young  
23 son -- that has \$200 to throw around so that they can drive a  
24 couple blocks down to Otto's to have lunch?

25 You know he's in Olympia the whole weekend because you

1 have his charge records, right? You know, he does go down to  
2 Otto's -- they don't take any trips, so there's absolutely no  
3 explanation for Mr. Corrina going 237 miles. Above and beyond  
4 that, you've got to think about putting yourself in  
5 Mr. Corrina's shoes. He doesn't have two nickels to rub  
6 together, yet, he's out this one weekend blowing 200 bucks on  
7 a car for the only time this whole weekend, for nothing? Does  
8 that make any sense to anybody?

9 What else does Mr. Corrina tell you? He tells you the  
10 Defendant comes in on Sunday and lies to get the car. "I am  
11 sick. I have to go to the emergency room. Justin's car is  
12 not working, I have to borrow yours."

13 You heard witnesses from the Olympia emergency room. She  
14 didn't go to either of the emergency rooms in Olympia. If she  
15 had, she would have been treated and there would have been  
16 records of them.

17 Now, she wants you to believe, conveniently, that: "Oh,  
18 gee, there must be some confusion about the other time I went  
19 to the emergency room. I am sure that's what Mr. Corrina must  
20 be confused about."

21 It was interesting. She looked at this record yesterday,  
22 but they didn't introduce it into evidence. Do you remember  
23 that? She said: "Yeah, I went to the emergency room on  
24 January 21st, and that must have been the confusion."

25 Well, I asked it to be introduced today. I wanted you to

1 see this. Ms. Waters did go to the emergency room on January  
2 21, 2002. She didn't go in the middle of the day, she didn't  
3 go late at night. She went at 6:00 in the morning. You will  
4 see from these records that indicated she had woken up early  
5 that morning with very bad stomach pains and went down. So  
6 she's there at 6:00 in the morning; she's out at 10:30. This  
7 is where Mr. Corrina is confused? I don't think so.

8 The Defendant steals, or I should say borrows,  
9 Mr. Corrina's cordless phone that night. Now, I know that  
10 sounds kind of stupid, but I want you to think about it.  
11 That, I suggest to you, is simply a fact no one can make up.  
12 If you are thinking about making up a story, you can think up  
13 a lot of things, but I am telling you, "somebody stole my  
14 cordless phone when they left that night" is not one of the  
15 facts you would normally come up with. I suggest to you that  
16 shows you that Corrina's telling you the truth.

17 Do you know what else it tells you? It tells you just how  
18 carefully this Defendant was planning this action. Not only  
19 does she arrange to have a car, she arranged to have it in  
20 her -- not even in her cousin's name, but in her cousin's  
21 wife's name. When she gets to the house, she steals the one  
22 mechanism -- he doesn't have a cell phone -- the one mechanism  
23 he has to contact her.

24 What a coincidence. The Defendant lies about having to go  
25 to Seattle. You heard the emergency room people. She didn't

1 have to go to Seattle if she was really sick and had to go to  
2 the emergency room. She has to have some excuse to explain  
3 the mileage, so she has to come up with a rationale for "how  
4 do I get this many miles on the car?" "I know I am going to  
5 be in Seattle," so the excuse is, "nobody would take me in  
6 Olympia," no explanation as to why she wouldn't have stopped  
7 in Tacoma. "I had to go all the way to Seattle." Therefore  
8 the lie is complete and the story is a good cover.

9 What's shocking about Mr. Corrina's testimony is, first of  
10 all, I would suggest to you from his demeanor and his  
11 relationship with the Defendant, it is totally credible;  
12 that's what the evidence proved. But once again, every aspect  
13 of Mr. Corrina's testimony to you, this critical testimony, is  
14 corroborated by physical evidence, something you can't make  
15 up.

16 Look at Exhibit 771. It's the rental car records. Once  
17 again, there's no confusion -- you don't have to remind  
18 somebody, when did I rent the car? It's this weekend. This  
19 is the mileage that is used. These are the times it's brought  
20 back. Look at the mileage, 237 miles.

21 Is there another explanation, any rational explanation?  
22 Oh, a bunch of trips around the Olympia area? Give me a  
23 break. Look at their bank statements. Look at their credit  
24 card statements. They are in Olympia this weekend and they  
25 are poor. Do you think they have got 200 bucks to throw

1 around to go down to Otto's and go down to Ralph's? It's  
2 their only car rental for the entire year.

3 I say that because, in truth, when you look at all of  
4 their records, that's a physical record that confirms what  
5 he's saying; it's the lack of any other car rentals that year.  
6 Look at the Defendant's reimbursement. On May 29, 2001, the  
7 only time in the records that we have for Mr. Corrina, he  
8 makes a \$200 cash deposit. Only time.

9 There's another record that I want you to look at that  
10 ironically we have not talked about, although the record is in  
11 evidence. Look at Government's Exhibit 745. Those are  
12 records relating to Justin Solondz. That's his bank account.

13 If you go to page 55 of Justin Solondz' bank account, you  
14 see records for his bank from May of 2001. If you go to the  
15 next page, what do you see? The day this car is rented, May  
16 19th, you see an ATM cash withdrawal of what? \$200. What a  
17 coincidence. The very day the car is rented, Mr. Solondz is  
18 withdrawing the very amount that in fact Mr. Corrina is going  
19 to be reimbursed.

20 Both Ms. Philabaum and Mr. Corrina say that there was a  
21 possible scrape on the car that they were both worried about.  
22 In fact, Mr. Corrina said this Defendant brought it to his  
23 attention and you say "well, that's just kind of his words."  
24 It isn't his words.

25 Look at his calendar, Exhibit 777. He returns the car.

1 The following Monday, on May 28th, what do you see? Call  
2 Budget. You can say to yourself, maybe I am going to rent  
3 another car. That's why you are calling Budget. You know  
4 that's not true because you've got his records and he doesn't  
5 say that.

6 What's the only rational explanation for why he would be  
7 calling Budget a week later? It's the explanation that he  
8 gave you. I was worried about the scrape that the Defendant  
9 told me about. I hadn't seen it, but I was worried there  
10 might be another charge; you know how tight money is with  
11 them.

12 That is physical evidence corroborating Mr. Corrina's  
13 story that this Defendant told him, after she returned the  
14 car, there might be a scrape on the side. That testimony from  
15 Mr. Corrina directly incorporates itself with Ms. Philabaum's  
16 story, exactly.

17 Finally, keeping Exhibit 777 up. In cross-examination  
18 there is this kind of implication: Oh, gee, you really needed  
19 the car because you didn't have your bike. You had to take  
20 your bike to the bike shop. Well, that's just a bunch of  
21 garbage because you can see right here on May 25th there is  
22 his note, "take bike to bike shop." He doesn't take the bike  
23 to the bike shop the week prior. It's on May 25th that he  
24 takes it to the shop.

25 Let's talk about Jennifer Kolar. Ms. Kolar's memory,



1 although suspect, on point is crystal clear and unwavering on  
2 the critical point applicable to this Defendant, and that is  
3 she was the lookout at the Center for Urban Horticulture arson  
4 on May 21, 2001.

5 Did it appear when Ms. Kolar testified that perhaps she  
6 has not totally addressed her criminal activity? I think that  
7 would be a fair assessment. She indicated she was hoping  
8 maybe, even though the plea agreement calls for her to do a  
9 minimum of five years, and she understands that we are going  
10 to recommend seven years, that gee, maybe out of the blue, the  
11 Judge would cut her a break and give her no jail time.

12 Maybe that's human nature, that you always hope for some  
13 miracle at the end. But if you look at Exhibit 791, which is  
14 entered into evidence, her plea agreement, that is a dream;  
15 that is a fantasy. There is a contract between us and  
16 Ms. Kolar.

17 At some point in the near future, we are going to be in  
18 this very courtroom and we are going to be recommending  
19 strongly to this Judge that she be sentenced to a period of  
20 seven years, and the best she can ask for is five years.  
21 That's what the contract is.

22 Now, technically, could Judge Burgess throw out the plea  
23 agreement? He could. That's always the Judge's prerogative.  
24 If that happened, Ms. Kolar would be back at square one. She  
25 would be looking at charges that would amount to up to a

1 mandatory life sentence, and I think we all know that's not  
2 really an option that anyone is going to exercise.

3 Ms. Kolar, like Ms. Phillabaum, has every motive to  
4 cooperate, even more. She was looking at mandatory life  
5 because she was involved in two arsons involving incendiary  
6 devices, even though I don't think in her mind she really  
7 realized that. Technically and legally, she was.

8 But I ask you the same question I asked about  
9 Ms. Phillabaum. She has a motive to cooperate. What is her  
10 possible motive to identify this Defendant if she wasn't  
11 involved? Think about it. She realizes, in late December  
12 when she calls and identifies this Defendant, in December of  
13 2005, that the house of cards is just starting to fall down.  
14 In all likelihood, other people are going to be coming in and  
15 cooperating.

16 So if she misidentifies people, as with Ms. Phillabaum's  
17 case, she will be much worse off than she had been if she had  
18 just kept her mouth shut. Maybe you hold somebody back, but  
19 misidentify someone?

20 The first time this Defendant's name is mentioned was when  
21 Jennifer Kolar, on December 29th, calls Michael Martin and  
22 says: "I remember who was the lookout at the Center for Urban  
23 Horticulture arson. It was Briana Waters."

24 Certainly not a name that we gave her, because we never  
25 heard of the name Briana Waters. So you've got to ask

1 yourself, when that call was made, what possibly could be  
2 going through Jennifer Kolar's mind to frame a totally  
3 innocent person? A person that had been her friend. A person  
4 that they had had a relationship with.

5       You can think about her mindset. Well, maybe she's  
6 protecting somebody. Maybe she's protecting Joe Dibee or  
7 something like that. That doesn't make any sense. She comes  
8 in, even in the December 16th interview, and mentions that Joe  
9 Dibee did Cavel West and did Susanville. In fact, this was  
10 the leader, really, of Susanville, so she's not protecting Joe  
11 Dibee.

12       Maybe it's a frame. Maybe it's the big conspiracy theory.  
13 Lacey Phyllabaum and Jennifer Kolar are trying to frame poor  
14 Briana Waters. Well, that's just a bunch of garbage, and you  
15 all know it is.

16       First of all, there's absolutely not one scintilla piece  
17 of evidence that there was any connection between the two, but  
18 ignore that. You know they are not trying to frame her  
19 because Lacey Phyllabaum doesn't know that Jennifer Kolar  
20 didn't ID her.

21       If they were going to get together and get a story, trust  
22 me, one thing they would be clear on is, "hey, I am not going  
23 to name you, Lacey, so don't confess." Don't you think that  
24 would be the one fact they would be absolutely clear on?

25       The last thing in the world Lacy Phyllabaum would have

1 done on February 1st was come in and confess if she knew her  
2 buddy and co-conspirator Jennifer Kolar was protecting her.

3 Think about the February 4th Olympia trip. That's the  
4 trip where Tony Torres drives down to Olympia. They can't  
5 find where Rodgers was living, so Kolar thinks they are going  
6 to be able to find the house. That works out; they do find  
7 Rodgers' house. She mentions, "Gees, I remember a meeting  
8 over at the Evergreen State College," they go over there, but  
9 there's construction and they can't really find the office.

10 But think about the little things she tells you on the way  
11 back. On the way back, they are talking, and they are trying  
12 to kind of prod her memory along. That's really what's going  
13 on all during January and February. They are not giving her  
14 information, but they are providing mechanisms for Ms. Kolar  
15 to try to refresh her memory. Let's go over the computer  
16 records you have. Let's go through your calendar. Let's go  
17 down to Olympia and drive around. Maybe any of these things  
18 will prompt her. It's not really working that well, but  
19 that's what's going on.

20 On the way back, Special Agent Halla says: "Hey, you  
21 know, we are looking to approach people. We are thinking  
22 about talking to Briana Waters, we are thinking about talking  
23 to Lacey Philabaum," you know, "What do you think about  
24 them," talk back and forth. What does she say? "I think you  
25 should try Briana Waters. I think she might cooperate with

1 you. "

2       What does that tell you about Jennifer Kolar's mind? If  
3 her mind was: "I am framing Briana Waters for a crime she had  
4 nothing to do with," would you tell Special Agent Halla: "Oh,  
5 hey, go talk to this woman so she can tell you I had nothing  
6 to do with this and this is a big frame?" Of course not. If  
7 I was framing Andrew Friedman, I would tell Special Agent  
8 Halla, "Don't go talk to that darn Andrew Friedman, he's such  
9 a liar, he will probably deny everything in the world about  
10 this stuff. "

11       That isn't what Jennifer Kolar does. She says, "You  
12 should go talk to her. I think she will cooperate. I think  
13 she will help you out." A comment of someone who is framing  
14 an innocent person? I don't think so.

15       She doesn't remember Lacey Philabaum and Justin Solondz  
16 being there. It's strange, no question. I would suggest to  
17 you, though, that if you use your common sense, you would  
18 expect -- if she in fact was fabricating the story, it would  
19 have broken one of two ways. Either you say "Lacey was  
20 involved, but I don't remember Briana and Justin being there,"  
21 or "I think Briana and Justin were there," but you forget  
22 Lacey.

23       The fact that she would specifically remember Briana being  
24 involved, not ID her boyfriend and not ID Lacey, I suggest to  
25 you that in fact it is not an intentional coverup, but that is

1 a determination for you to make. It is a determination that  
2 would be relevant but not critical, because the critical  
3 action is she did ID this Defendant.

4 What do we know about this Defendant, even before she gets  
5 on the stand to testify? Well, we have her quote from the New  
6 York Times, Exhibit 740B, "As long as people don't get hurt, I  
7 totally support it." I suggest to you there's no other way to  
8 read that sentence, that the "it" she is fully supporting is  
9 arsons. That's what she's saying in 1998.

10 You heard Tiffany Tudder say this is a big deal. I mean,  
11 who gets mentioned in the New York Times when they are in  
12 college? No one. This Defendant wants you to believe, "I  
13 didn't even read the article." Yeah.

14 What was the Defendant thinking during this time period?  
15 None of us really knows. Obviously, we can't get inside her  
16 mind. What we can do is look at other things, and we have  
17 Exhibit 614 that provides us some guidance on that. Exhibit  
18 614 is the manila folder that had the articles in it.

19 First of all, her fingerprint is on the article. Second,  
20 you can read the words: "Hey, woman, here's some stuff" --

21 MR. BLOOM: Objection to fingerprints on the folder.

22 MR. BARTLETT: Did I misspeak, Your Honor?

23 THE COURT: I think so.

24 MR. BARTLETT: I apologize. It's clearly on the  
25 folder: "Hey, woman, here's some stuff to read that I was

1 telling you about. We'll hang out soon. Heart-B."

2 Now, there's been a lot of discussion about whether this  
3 is unfair. I didn't choose these articles to put in here.  
4 She did. I didn't write the note to a co-conspirator saying,  
5 here are some articles I am choosing to send to you. Not only  
6 am I sending them to you, I want to talk to you about them.

7 Clearly, she thinks these are important. You will hear  
8 Jennifer Kolar's description of the articles. She doesn't  
9 even read them. She kind of glances through them, throws them  
10 in a box and eventually turns over the box. But there's  
11 supposed to be some kind of big conspiracy, she really did  
12 read it, somehow Justin Solondz -- it is absurd. These are  
13 her articles. You know the timeframe that these articles are.  
14 If you look through -- forget looking at what the substance of  
15 the articles are. You can see, for example, that the article  
16 "It ain't easy being green. Echo means promo" -- if you look  
17 at the very bottom, this article was downloaded on January 18,  
18 2001 at 3:55 a.m.

19 This is someone who is really into looking into this  
20 philosophical and theological angle of the green movement. If  
21 you look at one of the other articles, you will see that it is  
22 downloaded from the Internet on January 4, 2001. These aren't  
23 articles that came out of the blue. This is right during the  
24 time these conspiracies are being discussed, 2001.

25 What are the articles about? They are echo anarchist

1 articles. The only way to really save the earth is to destroy  
2 capitalism. The Defendant chooses to talk to the New York  
3 Times in 1998 and indicate that she supports arson. The  
4 Defendant chooses to select these articles and send them to  
5 her co-conspirator and say let's talk about them, and then she  
6 complains to you that it's so unfair that they are doing this.

7 At some point in her life, this Defendant must realize  
8 that part of being an adult is accepting consequences for the  
9 actions that you choose to undertake.

10 Where do you see identical language to the thoughts  
11 expressed for the articles she chooses to send to Jennifer  
12 Kolar? Look at Exhibit 401A, the ELF website, their ideology,  
13 exactly the same.

14 Look at the articles recovered from Justin Solondz' cabin.  
15 Look at the articles recovered from Bill Rodgers' cabin.  
16 These are the articles not only associating with each other  
17 and hanging out together; they are exactly the type of echo  
18 anarchist articles that are the backbone of the ELF.

19 I want to talk briefly about the Plum Creek Watch Mountain  
20 campaign. We heard a lot of discussion about that. I think  
21 it's fair to say that there's a lot of people who were very  
22 happy about the eventual outcome of it, and I don't want to  
23 talk about that. I want to focus on another aspect that  
24 everybody has kind of ignored.

25 The protest was eventually successful, but when it was



1 eventually successful was when the protest went from kind of  
2 the tree sitting, nonviolent to let's go into Seattle and  
3 occupy the Plum Creek Lumber Company offices and get in their  
4 face. That's really what turned the tide. So I would suggest  
5 to you what is really learned from Plum Creek isn't that  
6 sitting around the fire singing "Kumbaya" is the way to win  
7 these things, it is direct action against corporate entities  
8 that is the only effective way to win environmental campaigns.

9 "That really isn't my thought." If you look at the  
10 self-evaluation that this Defendant wrote to her teacher in  
11 December of 1999, you will see her describe how the campaign  
12 went. "The most intense period of time came the week before  
13 the deeds were to be signed over to Plum Creek Timber Company.  
14 In conjunction with the many environmental groups putting  
15 pressure on politicians and Plum Creek, the Cascade Defense  
16 Network decided to put their own kind of pressure and make a  
17 visit to Plum Creek's headquarters in Seattle."

18 "This action plan in a couple days' time was meant to  
19 force Plum Creek into negotiating with the mainstream groups  
20 to remove the Watch Mountain and Fossil Creek parcels from the  
21 land exchange."

22 "15 out of 23 activists made it to the 23rd floor to Plum  
23 Creek's office where they presented the office with an  
24 'eviction notice' and confronted employees about the trade.  
25 The next day, Plum Creek entered into negotiations with

1 members of the Gifford Pinchot Task Force. After a few days,  
2 Watch Mountain and half of Fossil Creek were dropped off the  
3 exchange with PC as willing sellers of the other half of  
4 Fossil Creek."

5 Those are this Defendant's description of why that  
6 campaign worked in December of 1999, and you remember during  
7 her cross-examination, she told you that as they were in the  
8 Plum Creek office, what were they telling them? "We are not  
9 going away. We are going to keep coming back. We are going  
10 to keep doing this. We are not going to let you cut these  
11 areas. Whatever it takes, we are going to push. We are  
12 committed. Whatever it takes. We are going to push."

13 Should we take a short break, Your Honor?

14 THE COURT: Do you need a break or can we keep going?

15 MR. BARTLETT: One of the things that's interesting  
16 about this case, it is not just the big things that line up,  
17 it's just not that Lacey Philabaum and Robert Corrina and  
18 Jennifer Kolar and the bank records all line up. When you  
19 look at it, even the little things add up.

20 Exhibit 712. This Defendant gets Bill Rodgers a cell  
21 phone. She who has no money, no cell phone of her own, feels  
22 close enough to Bill Rodgers that she goes out and gets him a  
23 cell phone because she knows she can trust him, because they  
24 are very close. She knows he will always pay his bill. She  
25 knows she's in no risk of being hurt by this. She doesn't

1 just do this for a while. She has his cell phone, Bill  
2 Rodgers' cell phone, in her name for 18 months.

3 Exhibit 713, look at the phone calls from Bill Rodgers'  
4 phone. Who gets called the most? I would suggest to you that  
5 it's clear this Defendant gets called more than anybody. All  
6 of the calls to Robert Corrina, virtually all the calls to  
7 Ocean -- you can look at the diagram where it shows the calls  
8 ending as soon as she moves out of the house. If you add just  
9 three or four of the Teresa Howell calls to her, Bill Rodgers,  
10 the acknowledged leader of this conspiracy, calls this  
11 Defendant more than anyone else.

12 Yet she wants you to believe when she testifies, "oh, we  
13 never talked about environmental matters. That never even  
14 comes up." Her whole life has been working on environmental  
15 matters. His whole life is centered on environmental matters.  
16 Yet, she gets on the stand and wants you to believe, "oh, no,  
17 we never talked about that."

18 MR. BLOOM: Excuse me. Objection, that misquotes the  
19 testimony.

20 MR. BARTLETT: Both she and Mr. Rodgers have no calls  
21 during the critical period in May of 2001. Exhibit 715, a  
22 graph of Mr. Rodgers' phone -- no phone calls during that  
23 weekend.

24 Exhibit 735 is a graph of the Conger Street home. Once  
25 again, no toll calls during that weekend. No. 4, you have the

1 two calls from Mr. Dibee. Once again, something small. This  
2 isn't like the whole case is resting on this. Another small  
3 fact, two calls from Mr. Dibee's phone. Five years worth of  
4 phone records. Two phone calls ever to an address --  
5 Mr. Corrina's address -- from Mr. Dibee. When did they occur?  
6 Just before Susanville and just after Susanville. What a  
7 coincidence.

8 You have Exhibit 550, the police scanner. Once again,  
9 something small. But this is a police scanner with an earbud.  
10 It is recovered from Mr. Solondz' cabin. It is exactly what  
11 the lookout at the Center for Urban Horticulture would have  
12 been wearing as she sat in the bushes watching for police,  
13 listening for police or firemen to come by.

14 You have the photographs of Mr. Solondz. You have the  
15 before photograph and then you have the after photograph.  
16 Does that look like somebody who is trying to change the way  
17 he looks? I would suggest yes.

18 You have the billing records for Ralph's Thifway.  
19 Really two different sets of Ralph's Thifway records. The  
20 first are the charges to her ATM, her Debit card, her credit  
21 card. In the entire year of 2001, there are three charges  
22 that show up on her billings, all during the week prior to  
23 this arson, all at a location three blocks from Mr. Rodgers'  
24 house.

25 Now, before she had the records, she told you, "I go to

1 Ralph's all the time," "I am there all the time," but then  
2 when she looked at the records, she was never there. She  
3 says, "oh yeah, there must have been charges to use your debit  
4 card so I must have paid cash." Sure. Just a coincidence  
5 that the three times -- three charges are there the week prior  
6 to the arson, and the entire rest of the year, not one single  
7 time does she make a charge there.

8 Then there was their big dramatic evidence, that, wow,  
9 here's the linchpin that will get us off: she made a charge  
10 at 7:12 p.m. on May 20th. I would have loved to have had that  
11 record. That is exactly when I assume they were leaving  
12 Olympia. Think about it. You heard the records today. It  
13 doesn't even get dark until 9:24 on May 20th. Use the  
14 StreetFair and all that crap. Who cares. They are leaving at  
15 7:12. She's there three blocks from Mr. Rodgers' house. The  
16 arson occurs sometime a little before 3:00. This is somehow  
17 some kind of exculpatory evidence? Don't be ridiculous.

18 You have Solondz' bank records once again showing the \$200  
19 deposit. Again, something small but exactly on the right  
20 date, exactly in the right amount. You have the map from  
21 Mr. Solondz' cabin. Once again, something small, but here you  
22 have a map; there are 29 panels on the map. Where is it open  
23 to? Of all the places in Seattle, it's open to the Center for  
24 Urban Horticulture.

25 I want to talk to you -- changing direction for just a

1 bit -- I want to talk to you about the jury instructions. I  
2 am not going to talk about all of them, but some of them.

3 Instruction No. 4 tells you what is evidence, and we  
4 talked about it at the very beginning of the case. When I  
5 talked about the three pillars, it wasn't my opinion. It is  
6 what the Judge has told you -- the sworn testimony of  
7 witnesses, the exhibits that have been received into evidence,  
8 and any facts that have been agreed to or stipulated on.  
9 That's what you focus on.

10 What isn't evidence? Instruction No. 6. In reaching your  
11 verdict, you may consider only the testimony and exhibits  
12 received into evidence. That's it. Certain things aren't  
13 evidence. No. 1, arguments and statements by lawyers are not  
14 evidence. The lawyers are not witnesses. I say that to you  
15 because at times when you sit through a trial like this, it  
16 might get a little confusing when you hear something, you say  
17 where did I actually hear that? Did I hear that from a  
18 witness on the stand, or was that one of the lawyers just  
19 talking?

20 In the defense opening statement, there were a lot of  
21 claims about she's innocent, she had nothing to do with this,  
22 over and over again. After a while, I would suggest to you  
23 that has a bit of an effect on you. You begin to think: Gee,  
24 there must be something there. But this instruction tells  
25 you, in fact, that you just ignore that.

1       My opinion, utterly irrelevant. Anybody else's opinion,  
2       utterly irrelevant. The only thing that is relevant to you is  
3       testimony, exhibits and stipulations, and you have to ignore  
4       all the rest.

5       Even if perhaps on the street, if you were talking to  
6       somebody, and somebody was really adamant about something, you  
7       would say, "Gee, I really need to give him a little break on  
8       that, he must know what he's talking about." In here, you  
9       can't do that. The instruction actually tells you, you cannot  
10      do that.

11      Look at Count 1. It's the conspiracy instruction, and it  
12      appears in Instruction No. 16. There are three things that  
13      the Government must prove beyond a reasonable doubt, and when  
14      we are talking about reasonable doubt, of course we are  
15      talking about the elements of the crime.

16      This is what we must prove to you beyond a reasonable  
17      doubt, and when you go back to deliberate, this is going to be  
18      the focus. What are those three things?

19      First, at some time between 1996 and October 2001, there  
20      was an agreement between two or more people to commit at least  
21      one of the crimes charged in the Indictment. I suggest to you  
22      that you are not going to waste a lot of time on that one,  
23      because clearly there was a conspiracy, there was stuff going  
24      on. There were a lot of arsons involved in this case. You've  
25      heard summaries of them. July 21, 1997, Cavel West, Jennifer

1 Kolar's first action.

2 November 29, 1997, the Bureau of Land Management Wild  
3 Horse Corral in Burns, Oregon.

4 June 21, 1998, something I always refer to as the "mini  
5 double whammy." It was the two arsons in Olympia in 1998.  
6 The one at the National Wildlife Research Center, and the  
7 second at the Animal Damage Control Facility.

8 May 9th, 1999, Childers Meat Company, Eugene, Oregon.  
9 December 25, 1999, Monmouth, Oregon, the Boise Cascade  
10 offices.

11 January 2, 2001, Superior Lumber in Glendale, Oregon. The  
12 "double whammy," May 21, 2001; the Jefferson Poplar Farm arson  
13 down in Clatskanie, Oregon.

14 The Center for Urban Horticulture arson at the University  
15 of Washington in Seattle.

16 Finally, the Bureau of Land Management arson in  
17 Litchfield, Oregon at Susanville, October 15, 2002.

18 There is a conspiracy here. There is an agreement to  
19 commit crimes.

20 The second element. The Defendant joined the conspiracy  
21 knowing of at least one of its objects and intending to help  
22 accomplish it. And then third, sometime between May 11, 2001  
23 and October 2001, one of the members of the conspiracy  
24 performed at least one of the overt acts. One of the overt  
25 acts, clearly. So what are you really going to focus on when



1 you go back to deliberate? Number 2, right? Was this  
2 Defendant -- did she join them? That's going to be the focus  
3 of your deliberations.

4 There are some related instructions. Instruction No. 17  
5 deals with multiple conspiracies. There might be an argument  
6 that: Gee, the conspiracy changed over time. Other people  
7 were involved. Well, when you think about it, and you look at  
8 the category set forth in Instruction No. 18, you will see  
9 that, in fact, in this case, there was clearly only one  
10 conspiracy. How do you know that?

11 Well, first of all, you have the continuity of people  
12 involved at various times throughout the entire course of the  
13 conspiracy: Jennifer Kolar, Joseph Dibee, William Rodgers.  
14 You have the targets, the same types of targets. You have the  
15 types of devices showing a continuity of plan.

16 Do you remember the development of the devices? It was  
17 almost like watching the Discovery Channel. You have the very  
18 simple devices, the gallon milk jug with the sponge in the  
19 handle. Then you've got the next development. Then you've  
20 got the next development.

21 But the key, the key that -- how you know this is one  
22 conspiracy really lies in two things: the communiqués where  
23 you have ELF and ALF jointly claiming responsibility for every  
24 one of these arsons. Why do they claim responsibility?  
25 Because doing one arson does nothing for this group. Nothing.

1 They know that burning anything down one time is not going to  
2 affect anything. In their mind, to have an effect, you have  
3 to do a number of them.

4 Why do they do a "double whammy"? Because they want more  
5 bang for their buck. They want to do it on the same night.  
6 Why do the communiqués reference other activities? Because  
7 they want to tie it together. They want corporations to  
8 change their activity because they feel threatened, and the  
9 only way they feel threatened is to have a number of  
10 activities, a number of arsons being threatened against them.

11 Do you remember Jennifer Kolar talking in  
12 cross-examination about, gee, you know, GE, genetic  
13 engineering, wasn't really a big deal to her. Her response  
14 was very telling. It tells how the conspiracy worked and why  
15 there was one conspiracy and why they all depended on each  
16 other for their benefit.

17 "It was an issue that we as a group had agreed was an  
18 issue that societally people were going to be in support of  
19 what we are doing. It was something that we thought we could  
20 change or win, and I did support that. It's the aim of the  
21 group, it's the aim of the conspiracy. That is what's being  
22 driven by these arsons."

23 Mr. Friedman, if you could put Instruction No. 19 on the  
24 overhead.

25 Counts 2 and 3 obviously don't exist for this Defendant,

1 so we are skipping right to 4. The Defendant is charged in  
2 Count 4 of the Indictment with possessing an unregistered  
3 destructive device, an incendiary bomb, in violation of  
4 Section 5681 of Title 26. Two elements. The first is that on  
5 or about May 20, 2001, the Defendant knowingly possessed -- or  
6 in her case, it's almost always aided and abetted or helped  
7 someone else possess -- a destructive device, an incendiary  
8 bomb.

9 And second, the destructive device, the incendiary bomb,  
10 was not registered to the Defendant or other persons in the  
11 National Firearms Registration and Transfer Record.

12 Let's take the easy one first. Number two, you have got  
13 the certified records at 781, 782, 783, 784, 785 -- the five  
14 people in this Indictment -- you have the certified record  
15 saying they are not registered. So I don't think you will  
16 spend a lot of time on that one.

17 Element one is possession of the destructive device, in  
18 this case, an incendiary bomb. The first question you are  
19 going to ask yourself is whether it's a destructive device.  
20 If what was recovered at the University of Washington, what  
21 you have seen, the plastic here, what Donald Sachtleben  
22 described -- is that a destructive device?

23 Look at Instruction No. 21. It might have been kind of  
24 hard to follow because you don't see it in front of you, but  
25 what Judge Burgess was reading to you is that, in the code, in

1 the United States Code, our laws, a destructive device can be  
2 really one of three types. It can be an explosive type. It  
3 can be an incendiary type, or it can be a poison gas type.

4 Of those three types, you kind of have six different  
5 categories. You could have an explosive bomb, an explosive  
6 grenade. You could have an incendiary bomb, an incendiary  
7 grenade; all of those.

8 Do you remember Brennan Phillips, the guy from ATF?  
9 Actually, he was our first explosive expert. Do you remember  
10 him being on the stand talking -- he was the guy that had been  
11 in the Army for a long time and now works at ATF. He told you  
12 about these three. He said they work in different ways. An  
13 explosive device works by exploding, supersonic shock wave,  
14 buildings are knocked down; that's how they work.

15 An incendiary bomb doesn't work like that. A incendiary  
16 bomb works by burning things. That's why they call it  
17 incendiary. A poison gas bomb works by poison gas. So it's  
18 really the three different categories.

19 In this case, you had Donald Sachtleben testify about the  
20 incendiary bomb found at the University of Washington. Mike  
21 Morgan, for the bomb found at Susanville, and Brennan  
22 Phillips, for the bomb found at the Jefferson Poplar Farm.

23 I would like to tell you that that was some kind of clever  
24 plan on our part to bring in three experts, but the truth is  
25 that's just the way the evidence was analyzed, and that's why

1 we ended up bringing in three experts for you. But in some  
2 way, it makes your job easier because the truth is, you heard  
3 the devices described, and it was clear they were all set up  
4 the same way; all of them.

5 Now, you also heard the expert that the defense called,  
6 Dale Mann. You probably noticed that I didn't cross-examine  
7 him at all, and that's because he just didn't know what he was  
8 talking about. He did not understand the federal law. I will  
9 read to you why I say that.

10 "Question: In your opinion, as an expert, to each of  
11 those, all those options, the 18 options -- referring to these  
12 18 options, the explosive bomb grenade, the incendiary bomb  
13 grenade, the poison gas bomb grenade -- with regard to all of  
14 those 18 options, six times three, they all have one thing in  
15 common?

16 "Answer: I believe so.

17 "Question: What is that?

18 "Answer: That they all will explode."

19 Instruction No. 22. Well, actually, you are instructed on  
20 what a destructive device is and what an incendiary device is  
21 in Instruction No. 22. "A destructive device includes any  
22 incendiary device, be it a military-type weapon or homemade  
23 incendiary weapon, the function of which is to ignite and  
24 destroy property. Although it may cause an explosion, an  
25 incendiary device does not have to cause an explosion in order

1 to be considered an incendiary bomb. "

2 So when Dale Mann says, they have to explode to be a bomb,  
3 he simply is wrong. That's not my opinion; that's the law.  
4 He didn't know the law. When thinking about his testimony,  
5 that's how much weight you should give it.

6 "Any device containing combustible material capable of  
7 producing sufficient heat to destroy property of any kind and  
8 having components designed to ignite, that combustible  
9 material is an incendiary bomb. The term "incendiary bomb"  
10 does not include any device which is not designed as a weapon  
11 for the destruction of property. "

12 You remember Brennan Phillips talking to you about that.  
13 There are some things -- in fact, I think the example was the  
14 soap. Well, it might burn things down, but it's really not a  
15 weapon. You have to have both in this case. I would suggest  
16 to you that you heard overwhelming evidence that both existed  
17 in this case. It was, in fact, a weapon designed to cause  
18 damage by burning things and, in fact, it was designed to be a  
19 weapon.

20 So the question you have once again, I believe, is fairly  
21 simple, whether this Defendant possessed or aided and abetted  
22 in the possession of that destructive device.

23 I want to talk about Counts 5 and 7 because they are both  
24 arsons. They are really pretty similar. One of them is arson  
25 under a theory that the Center for Urban Horticulture was a

1 building used in interstate commerce or activity affecting  
2 interstate commerce.

3 Count 7 is arson again, but the theory is that it's an  
4 arson of a building owned or possessed by an institution  
5 receiving federal financial assistance. So those are kind of  
6 the two hallmarks of this.

7 What are the four elements we have to prove? Instruction  
8 No. 24. First element, the Defendant damaged or destroyed  
9 property, or aided and abetted in damaging or destroying a  
10 property, a building.

11 If you think back on the photographs, Exhibit 320, I don't  
12 think there's a lot of debate about whether there was damage  
13 to a building based on the arson at the Center for Urban  
14 Horticulture.

15 Number two, the Defendant aided and abetted the use of  
16 fire to do so. Once again, if you remember, the video that  
17 you actually have to see -- you don't have to listen to  
18 anybody's testimony; you can see the fire that in fact caused  
19 this damage.

20 Three, the Defendant acted maliciously. In other words,  
21 it wasn't an accident. It wasn't somebody dropping a  
22 cigarette carelessly. It was intentional. You saw this  
23 exhibit. You saw the components. You've heard about the  
24 careful planning that went into this. Ladies and gentlemen,  
25 this could be the furthest thing from an accidental fire that

1 you will ever hear about.

2 With regard to Count 5, the fourth element is a building  
3 used in interstate commerce or activity affecting interstate  
4 commerce. It was kind of dry testimony, but I want to direct  
5 your attention back to Gary Quarforth. He was the budget  
6 director that came in and testified. Do you remember him? He  
7 came in and talked about what the University of Washington is.  
8 I don't know about you, but for me it was really very  
9 shocking, surprising.

10 It is a \$2 billion holding company. That's how he  
11 described it. A \$2 billion holding company that he views in  
12 kind of a three-tiered category. The first category is  
13 education. That's what they are selling: Education.

14 The second category is research. They are not really  
15 selling research; they are getting money to do research.

16 The third category is housing, food and entertainment.

17 He told you specifically that in 2001, housing, food and  
18 entertainment generated for the University of Washington \$267  
19 million.

20 He went on to explain to you that the University of  
21 Washington, for budgetary reasons, actually targets students  
22 from out of state so they can get the increased out-of-state  
23 tuition to help their budget. For undergrads, in 2001, they  
24 had almost 11 percent of the student body was from out of  
25 state, and 39 percent of the grad students.



1       And with the Center for Urban Horticulture, you heard Toby  
2 Bradshaw say that actually one of his primary sources of  
3 funding was a cooperative that he had set up for businesses on  
4 poplars, and although he wasn't doing genetic engineering, he  
5 was helping businesses involved with poplar growing plants.  
6 And in fact, they got first dibs on his research when he got  
7 done with it; they got first dibs on the seeds when he  
8 produced them, and in exchange for that, they gave him money.

9       I would suggest to you that there really was no question  
10 that this, in fact, was a building used in affecting  
11 interstate commerce with respect to the element of Count 5.

12       What about Count 7? Was the building owned or possessed  
13 by an institution that needed federal financial assistance?  
14 Once again, you had Mr. Quarforth describe to you -- I had  
15 never realized, the University of Washington is the second  
16 leading school in the United States for receiving federal  
17 funding. Only Johns Hopkins receives more federal funding  
18 than the University of Washington.

19       In 2001, \$571 million of federal money came pouring into  
20 the University of Washington. Specifically, with regard to  
21 the College of Forest Resources in 2001, over \$5 million came  
22 in from federal funding. In addition to Mr. Quarforth, you  
23 had Sarah Reichard, Toby Bradshaw -- I am forgetting  
24 Mr. Hinckley's first name, but they all came in to describe to  
25 you that not only does the school get money, but they as

1 professors and assistant professors are expected to get their  
2 own federal grants, and they walked you through the various  
3 grants that they all have.

4 Finally, Mr. Quarforth described that, with regard to the  
5 Center for Urban Horticulture, they specifically have a  
6 strange breed of federal funding. It's called the McIntyre  
7 Stanis Funding. It's federal funding for any college that's  
8 involved in forest research, and in 2001 they received between  
9 \$350,000 and \$425,000.

10 Once again, I would suggest to you that although there are  
11 four elements with regard to Count 5 and Count 7, when you go  
12 back to deliberate, there's really only one question you are  
13 going to be asking yourself: Whether this defendant aided and  
14 abetted that arson.

15 Count 6 is using a destructive device during and in  
16 relation to a crime of violence. You've heard a lot about  
17 this count, and I am not going to kid you. This is the one  
18 and only count that carries a 30-year mandatory sentence. I  
19 am not going to hide that from you.

20 Before you get to this count, you have to focus on Counts  
21 5 and 7, because the first element says that the Defendant  
22 committed or aided and abetted in the commission of a crime  
23 damaging or destroying a building by fire in interstate  
24 commerce as charged in Count 5, or a building belonging to an  
25 interstate institution receiving federal financial assistance

1 as charged in Count 7. So you have to get to Counts 5 and 7  
2 to make up your mind, and then you get to this count.

3 Second element, the Defendant knowingly and intentionally  
4 used or aided and abetted the use of a destructive device,  
5 once again an incendiary bomb. I want to specifically make  
6 sure you understand that. It's not just that she aided and  
7 abetted the arson. She actually had to have aided and abetted  
8 the use of the incendiary device.

9 Third, the Defendant or a person whom the Defendant aided  
10 and abetted used the destructive device during and in relation  
11 to the crime of damaging or destroying a building by fire.  
12 Again, I would suggest to you that's very much a given.

13 Looking at, did this Defendant do things that aided and  
14 abetted this incendiary bomb, I would suggest to you the  
15 evidence is overwhelming. She supplied the clean room, she  
16 supplied the car to transport it, she provided the lookout  
17 which was the security to make sure that the destructive  
18 device was effectively put into Toby Bradshaw's office so that  
19 the building could be destroyed, and she helped with the  
20 get-away. Any one of those things make this Defendant guilty.  
21 All of them make her overwhelmingly guilty.

22 Let's talk about the defense case for a bit. Stan  
23 Meyerhoff, remember the name? Stan Meyerhoff -- you heard  
24 through John Comery's testimony that on March 17th,  
25 Mr. Meyerhoff was shown this picture of the Defendant and

1 indicated "familiar," "not involved." And I guess we are to  
2 believe that that means she's totally innocent; let's just all  
3 go home. But there is really more to the story than that,  
4 because what Mr. Comery tells you is that actually before  
5 March 17, 2006 when he made that comment on the photograph,  
6 Mr. Meyerhoff actually had talked about a woman with blonde,  
7 curly hair that played the violin and was from the Bay area  
8 who was involved in the Susanville arson.

9 Now, he may have missed the photograph, but I would  
10 suggest to you that that verbal description fits only one  
11 person in this small group: This Defendant, to a "T," even  
12 getting the violin right.

13 Mr. Comery further describes that six days after that  
14 January 25th interview where he physically described the  
15 Defendant, he actually looked at the photograph of Ms. Waters  
16 and said, "This looks like the blonde woman who was at  
17 Susanville if her hair was blonder."

18 Mr. Meyerhoff, as the "oh, this case should be dismissed"  
19 witness? No.

20 The December 16, 2005 interview with Ms. Kolar -- we have  
21 heard a lot about that. I am going to cut right to the chase.  
22 You have the notes, and you can look at them yourself when you  
23 go back to deliberate. Special Agent Halla's notes about the  
24 University of Washington -- this is what he writes: "A.  
25 Organized the fire. 5 to 6. Capitol Hill Girl." Then it

1 goes on. But that's really the heart of what we are talking  
2 about right here.

3 Then you have Special Agent Torres' notes. "Avalon  
4 organized the arson. Unknown female, Capitol Hill Girl,  
5 number two. Crazy Dan guy, number three. Punk Boyfriend,  
6 number four. And me, number five."

7 What does that tell you? That tells you that they both  
8 clearly heard something different. If Special Agent Halla  
9 thought there were five people positively identified at that  
10 point in time, you know it would have been in his notes. You  
11 know he would have put it there.

12 What's interesting is, if you actually go to the next page  
13 of both Special Agent Torres' and Special Agent Halla's  
14 notes -- because if you look on the next page, a continuation  
15 of the discussion, you see that Ms. Kolar on that day  
16 described "left someone in bushes, lookout with radio."

17 Then you see with regard to Mr. Torres, right here,  
18 "Someone at car for lookout. We left someone at car for  
19 lookout." "Car/van and came in car/van and we left someone at  
20 car for lookout."

21 That's what's in their notes. They eventually write a  
22 written report, and they say, "The night of the arson, Kolar,  
23 Avalon and a few other individuals met at a bar or restaurant  
24 across from Greenlake in Seattle." From this, we are supposed  
25 to devise the huge conspiracy how everybody is lying;

1 everybody is framing poor Briana Waters, from that simple  
2 choice.

3 They didn't throw away their notes. They didn't try to  
4 doctor anything; they turned everything over. They made  
5 choices. From that, they are trying to build a mountain out  
6 of a mole hill.

7 There's an old adage that's heard around courthouses: If  
8 you have the facts on your side, you pound the facts. If you  
9 have the law on your side, you pound the law. If you have  
10 neither, you pound the table.

11 I suggest that all of the cross-examination, all the  
12 innuendo about all of the horrible things that these FBI  
13 agents did with regard to this initial interview is just that:  
14 Pounding the table. No one tried to insert that Jennifer  
15 Kolar identified Briana Waters on that first day. No one  
16 threw away their notes. Agents work hard. They made the best  
17 choices they felt and went forward with an investigation.

18 The February 4th interview of Ms. Kolar, when they are  
19 driving down to Tacoma, you heard a big to-do about that. In  
20 Special Agent Halla's notes he says, "don't remember Briana  
21 and Lacey being together," and 302 says, "Kolar did not recall  
22 Briana and Lacey being close friends."

23 Once again, you hear the big conspiracy; everybody is  
24 framing Briana Waters. It's ridiculous.

25 First of all, what difference does it make? Kolar has

1 never said Lacey Philabaum was at the University of  
2 Washington arson. So to make the argument that somehow saying  
3 that she never remembered them together proves that Briana  
4 Waters wasn't at the University of Washington is ridiculous;  
5 it doesn't make any sense. She's never remembered her being  
6 at the University of Washington arson.

7 I want to remind you of something that struck me the first  
8 week. Remember Dan Priest? He was the Lieutenant from the  
9 Seattle Fire Department, in all honesty, kind of a throw-away  
10 witness. He came in and talked about he was the first  
11 responder to the scene. Do you remember the guy? He was a  
12 Lieutenant at the first fire house. Do you remember this  
13 series of questions and answers:

14 "Question: Your information is that the mechanism  
15 went off at 3:22 a.m.; is that correct?

16 "Answer: That's when we were dispatched.

17 "Question: You say dispatched. That was your unit.  
18 Was that your unit?

19 "Answer: Engine 38.

20 "Question: Do you know someone named Butler, first  
21 initial E?

22 "Answer: That doesn't ring a bell.

23 "Question: Do you remember the University of  
24 Washington Police Department, being interviewed yourself on  
25 the 26th of June of 2001, by the University of Washington

1 Police Department, by someone named E. Butler of the  
2 University of Washington Police Department?

3 "Answer: It doesn't stick in my brain, but it could  
4 have happened.

5 "Question: If you don't remember the name, do you  
6 actually remember the interview?

7 "Answer: No.

8 "Question: Do you remember telling anyone on June  
9 26, 2001, any official at the University of Washington that at  
10 approximately 4:15 in the morning, Station 38 responded to an  
11 automatic fire alarm at the University of Washington Center  
12 for Urban Horticulture? 4:15 a.m. Do you remember telling  
13 anybody that?

14 "Answer: No, I don't.

15 "Question: May this be shown to the witness, please?  
16 I am going to ask if this refreshes his memory."

17 "Is there anything on that he might have done? There's  
18 one paragraph that says he doesn't remember. I withdraw my  
19 objection. Thank you. May it be marked for identification?  
20 Could we start a different series, D.-1?

21 "Question: Having read that, does that refresh your  
22 recollection as to whether or not you were interviewed by  
23 somebody from the Police Department?

24 "Answer: I don't know. I don't recall the  
25 interview.



1           "Question: Do you remember having any interviews,  
2 whether that date or any other date, and telling somebody,  
3 'tell us what happened, give us your best memory'?

4           "Answer: That makes sense. The University of  
5 Washington would conduct such an interview, but I don't recall  
6 it happening.

7           "Question: Do you remember telling anyone from the  
8 University of Washington that you responded at 4:15 in the  
9 morning?

10          "Answer: If I said 4:15 in the morning, it was  
11 probably an approximation.

12          "Question: We are talking about an alarm at 3:22.  
13 We are talking about almost an hour later that it appears you  
14 told someone you responded. Does that refresh your  
15 recollection as to what happened with regard to your response  
16 or what was said to the University police with regard to your  
17 response?

18          "Answer: No, I think your --"

19          What is going on here? We all know when they responded.  
20 There are call records on when calls have gone out, when they  
21 respond to go back in. What's going on? What, is this part  
22 of the big conspiracy? Poor Dan Priest who gets blind-sided  
23 coming in here, that oh, you said 4:15 in the morning, so you  
24 are lying.

25          Another part of the defense case, Philabaum's alleged

1 affair with Justin Solondz. It was almost two weeks ago, but  
2 do you remember when that first came up, what Ms. Phillabaum's  
3 response to it was? She kind of laughed, like are you  
4 serious?

5 Conveniently, the one witness who could confirm or deny  
6 this is Justin Solondz, and he's a fugitive; he's out of the  
7 country.

8 You've heard testimony that allegedly there was a party at  
9 Ocean's house, that's over the summer, and that's when she saw  
10 Ms. Phillabaum, and that's when there's a confrontation. This  
11 Defendant has no burden to bring anybody in to testify, but in  
12 your mind, I assume many people would have thought this was a  
13 party at her friend's house with her friends. Other people  
14 would come in and testify and tell us that yes, this all  
15 happened.

16 She has no burden, but she clearly could have brought in  
17 other witnesses to tell us about all these things. In fact,  
18 in her own description, there's never a huge confrontation  
19 that you are kind of expecting in a public setting, where she  
20 and Ms. Phillabaum really get into it, the kind of venomous  
21 anger that would make someone frame an innocent person for a  
22 very serious crime. Her story is ridiculous.

23 It is a grasp at straws from someone who is unable to  
24 accept responsibility for her own actions, so therefore she  
25 will pattern her story and change it to fit whatever slim hope

1 she feels she can force upon you.

2       The Kolar spurned Lesbian lover defense, that somehow this  
3 one e-mail that we get in 1999, with Ms. Kolar mentioning in  
4 passing that she found a woman attractive at a party somehow  
5 leads us to believe that Ms. Kolar, despite her friendship  
6 with this Defendant, is framing her because she's really  
7 bitter because they are not lovers, even though Ms. Kolar has  
8 had platonic relationships with men; and, in fact, described  
9 to you in detail that she's been with her present partner for  
10 over seven years; and, in fact, it was her love for her  
11 present partner that got her out of the movement. He wasn't  
12 in the movement, she loved him and so therefore she felt she  
13 had to get out of the movement.

14       Their big smoking gun, the Ralph's Thriftway record. I  
15 told you already, I wish I would have seen those before  
16 because it's exactly when she should have been at Ralph's  
17 Thriftway: 7:12 p.m. on May 20th, on their way out, three  
18 blocks from Mr. Rodgers' house, on their way up. It doesn't  
19 get dark until 9:24 that night. You heard that today.

20       The arson -- the fire isn't called into the police until  
21 3:10 -- a little after 3:10. We somehow think this is an  
22 alibi that she's in Olympia at 7:00?

23       Are there discrepancies that you will be able to hear  
24 about? We know about them. There are discrepancies in the  
25 Government's story. You heard that -- are the devices in the

1 trunk, or are they left behind at the dumpster? Does  
2 Mr. Solondz go down to the Center for Urban Horticulture and  
3 go behind the building, or does he remain in the car? Does  
4 the car, in fact, get into a small accident and engage in a  
5 little scratch?

6 These are the types of discrepancies that tell you people  
7 are remembering things differently and doing the best they can  
8 without talking to each other, without looking at other  
9 reports to remember what happened.

10 You heard from a fair number of character witnesses on  
11 behalf of the Defendant. Actually, I think they are  
12 important. I am not going to denigrate them at all, but I  
13 would ask you to do this. Imagine if Jennifer Kolar was on  
14 trial. Can you imagine all the people that would come in from  
15 Jennifer Kolar's work and talk about the great things -- she's  
16 just a workaholic within the .com industry, and her diving  
17 friends, and the people from her sailing club?

18 She would have people to come in and say equally great  
19 things about her. Lacey Phyllabaum. She was a journalist for  
20 a long time, and actually clearly a spokesperson because you  
21 heard from their own witnesses that they went to some activist  
22 meetings and Lacey Phyllabaum was a facilitator at this.

23 Really, clearly a level higher than this woman, and Lacey  
24 Phyllabaum told you about it. It was a slow process. I  
25 didn't do an arson right out of the blocks. I was involved in

1 above-ground activities. I wrote articles, and I just kind of  
2 morphed into it. You heard from Lacey Philabaum how this  
3 happened.

4 The Defendant wants you to believe that she is the  
5 unluckiest person in the world. Actually, the unluckiest  
6 person in the history of the world, really. Make no mistake  
7 about it, when you go back there to deliberate, when you talk  
8 about Jennifer Kolar and Lacey Philabaum and everybody else,  
9 they all have motives to lie, but who has the greatest motive  
10 to lie? This Defendant.

11 I would suggest to you that you try not to appeal to your  
12 emotions. She has a child, and we can all relate to that, but  
13 I don't think you have to hear about the child in virtually  
14 every answer that came out of her mouth. Why did she say that  
15 to you? What she really wants you to do is to avoid and  
16 ignore the Court's ruling that you must base your decision on  
17 the evidence, and instead base it on your emotion. But you  
18 all took a vow, a pledge, that you would not do that, and I  
19 know you won't.

20 She's telling the truth, and everybody else is lying. Not  
21 only is she telling the truth and everyone else is lying, but  
22 every other piece of physical evidence is lying. Her lies  
23 tell you she's guilty. She can't come up with a better story  
24 than this. She wants you to believe: "I don't think I ever  
25 said anything to the New York Times." "Those really aren't

1 the articles I sent to Jennifer Kolar."

2 Now, I think there was a different car that Robert Corrina  
3 is confused about and a different emergency room visit.

4 Every Defendant has a right to trial. They have a right  
5 to be represented by counsel. They have a right to have their  
6 evidence presented by a jury of their peers such as yourself,  
7 to have it presented by an impartial Judge. Society also has  
8 certain rights. The public is entitled to have people who  
9 commit serious violent crimes be held accountable. When  
10 evidence is presented that proves a Defendant's guilt beyond a  
11 reasonable doubt, the public has a right to a verdict of  
12 guilty.

13 The victims of these crimes -- and you heard from a few of  
14 them: Sarah Reichard, Toby Bradshaw, Don Rice from Jefferson  
15 Poplar -- these victims and all the victims we didn't call  
16 that have been impacted by this case deserve to know that  
17 people who commit such horrible crimes, that devastated their  
18 lives, will be required to face the consequences of their  
19 actions.

20 Lacey Philabaum and Jennifer Kolar made difficult  
21 decisions to plead guilty and cooperate, a choice that cost  
22 them many, many of their friends and will leave them to be  
23 serving several years in jail.

24 The Defendant is hoping that if she mentions her daughter  
25 enough and Watch Mountain enough, that you will take pity on

1 her and ignore what she chose to undertake back in 2001; that  
2 you will choose to ignore the testimony from the witness stand  
3 and the exhibits that have been entered into evidence.

4 Ladies and gentlemen, we are a nation of laws, not  
5 individuals. Everyone that comes into court, whether they are  
6 nice and sympathetic or horrible and despicable, deserve a  
7 fair trial and deserve to be treated the same. Everyone  
8 should be treated the same: No better, no worse.

9 It is time for this Defendant to be held accountable, for  
10 her to finally face reality and admit and accept  
11 responsibility for what has happened. I ask you to find this  
12 Defendant guilty of all charges. Thank you.

13 THE COURT: All right. Before we hear from the  
14 defense, we are going to take the afternoon recess. Don't  
15 discuss the case. You haven't gotten it for that purpose.  
16 Just take advantage of the recess and have your books on the  
17 chair, and I will have you back in here shortly.

18 (Jury not present.)

19 THE COURT: All right. You may be seated. We'll  
20 take the afternoon recess.

21 THE CLERK: All rise. Court is in recess.

22 (Afternoon recess.)

23 (Jury not present.)

24 THE COURT: You may be seated. Bring them in.

25 (Jury present.)

1 THE COURT: All right. You may be seated.

2 You heard from the Government, their closing, now you will  
3 hear from the defense.

4 MR. BLOOM: Good afternoon. Thank you for your  
5 attention.

6 More than that, thank you for undertaking -- it really is  
7 one of the great responsibilities that citizens can undertake  
8 on behalf of justice. That's what we are looking for here, is  
9 justice. This woman is innocent. She didn't do this. The  
10 evidence that's been presented to you is not credible  
11 evidence.

12 We will show -- we will absolutely show that it is lies,  
13 and you cannot convict a person of any crime, much less a  
14 serious crime, based on lies. It's just not right. It's not  
15 fair. It's not within the Constitution, and it's not moral.

16 I want to say one thing first. If for any reason any of  
17 my conduct or, less so, Mr. Fox's -- if you thought I was too  
18 aggressive or anything that troubles you, firstly I apologize,  
19 and secondly, please, whatever you do, don't take it out on  
20 Briana Waters. I don't think I have done anything. I have  
21 tried not to, but if that's the case, I ask you to please look  
22 past me and look at Briana Waters.

23 Needless to say, what this is about is the Government's  
24 evidence is on trial. That's what the burden of proof means.  
25 They have to come forward with credible evidence to prove to



1 meet their burden beyond a reasonable doubt, and I agree with  
2 Mr. Bartlett. This case is about one thing. It is about  
3 whether or not there is credible evidence from credible  
4 witnesses beyond a reasonable doubt that Briana Waters was  
5 involved in the University of Washington arson, not the Cavel  
6 West arson, not any other arson. That is the incident which  
7 she's accused of participating in.

8 It's not about sympathy. We can agree on that. We are  
9 not asking you to find Ms. Waters not guilty because of  
10 sympathy. She told you the truth. She told you the truth  
11 about her family situation, and we told you the truth about  
12 her character.

13 This case is very much about character. Ms. Waters'  
14 character on the one hand -- and you've heard maybe 10 or 12  
15 witnesses talk about who she is, who she was, and, indeed, who  
16 she will always be. You have seen before you Lacey  
17 Philabaum, you've seen Jennifer Kolar and you've seen Robert  
18 Corrina and, of course, I will be talking about each of them.

19 It's simple. To begin with, she is not a person who would  
20 in any way be involved in a crime like this. She just isn't.  
21 Those people that you heard, who know her, who've known her so  
22 well, they wouldn't be here. The Assistant Attorney General  
23 of the State of Washington, do you think he would be here if  
24 he thought there were any possibility that she committed this  
25 crime?

1        Now, I have, of course, an outline for what I want to say,  
2 and perhaps I shouldn't be tempted into it, but there's  
3 certain things that Mr. Bartlett has said to you that I really  
4 feel I need to address right up front before I go into what it  
5 is I had planned to say.

6        One of the things he was talking about came up more than  
7 once, but toward the end of his presentation, and it had to do  
8 with how pleased they were if only they had had the Ralph's  
9 Thriftway records at some earlier time, that would have been  
10 helpful to them. That is what you call nonsense.

11       If you believe, or if they want you to believe Lacey  
12 Phillabaum, Lacey Phillabaum had people arriving in Seattle,  
13 the people herself and the people who were supposedly with  
14 her, in the early evening. Jennifer Kolar said that they met  
15 at the restaurant at 8:00, maybe 9:00.

16       Now, one of the important things about that event, the  
17 so-called trip from Olympia to Seattle -- and it was reflected  
18 in the last witness this morning, Agent Ford -- they went from  
19 the Ralph's Thriftway to Seattle. I don't think it would be a  
20 lot of time between Ralph's Thriftway and Conger Avenue --  
21 maybe five minutes, maybe 10 minutes -- but the whole idea is  
22 a distortion.

23       This isn't about going from Rodgers' house. All the  
24 action, if you believe Lacey Phillabaum, supposedly took place  
25 at Conger Avenue. That's where supposedly the devices were

1 made. That's where supposedly there was a clean room. So the  
2 trip wouldn't have been from Thriftway, and it wouldn't have  
3 been from Rodgers' house. It would have been from Conger  
4 Avenue. So I don't quite understand what it is they are  
5 trying to say.

6 It's a good thing for Briana Waters, for their purposes,  
7 that Briana Waters was in Olympia at 12 minutes after 7:00 on  
8 Sunday, May 20th? That's not true. That's not a good thing  
9 for them. It proves that she could not have been in Seattle  
10 at the time they say she was in Seattle. It's as plain as  
11 that. It's just not possible.

12 Even with no traffic -- I am talking about Agent Ford who  
13 testified today -- even with no traffic, it took him 68  
14 minutes. And Mr. Fox asked some questions -- it turns out  
15 that Mr. Fox in his research found there was actual  
16 construction on I-5 on that day and at times it was a one-lane  
17 road.

18 Now, people, you all live in the area here, in the  
19 corridor. You know what happens to I-5 when it's a one-lane  
20 road. It's not 68 minutes. It's maybe an hour and 68  
21 minutes.

22 Then, of course, Mr. Bartlett and Mr. Friedman didn't ask  
23 Agent Ford to go to the location where they want you to  
24 believe that the equipment was dropped off, at a dumpster  
25 somewhere near the Center for Urban Horticulture. Well, if

1 you take that detour, that takes another at least 10 minutes,  
2 maybe 15 minutes, maybe 30 minutes, maybe 40 minutes, to  
3 surreptitiously drop off some equipment before they go to meet  
4 Jennifer Kolar.

5 So we are talking about -- and if you follow Mr. Rodgers'  
6 and Mr. Meyerhoff's manual, you want to get there in plenty of  
7 time, you want to relax, you want to chill out, you want to  
8 get yourself together, you want to be there long before, you  
9 don't want to leave at the last minute. You want to leave --  
10 and apparently, if Phillabaum is right, they did leave at  
11 maybe 5:00 or 5:30.

12 Well, if they left at 5:00 or 5:30 or 6:00 or even 6:30,  
13 Briana Waters could not have been with them, could not have  
14 been with them because she was at Ralph's Thriftway at 12  
15 minutes after 7:00. It's critical. It's really important.  
16 It's objective evidence, not subject to anybody's whims, not  
17 subject to anything. She was there at 12 minutes after 7:00  
18 on that Sunday night. We know she was there because we found  
19 the records.

20 With regard to that, when Ms. Waters testified, you heard  
21 her say -- I asked: Once you saw those records, aside from  
22 feeling very good about it, did that help her remember that  
23 she was in fact at Ralph's Thriftway? Well, she said no; she  
24 told the truth.

25 Here's the key fact. Unlike Lacey Phillabaum, who burned

1 down this building, the Center for Urban Horticulture, unlike  
2 Jennifer Kolar who burned that down, plus three other arsons I  
3 am going to talk about, Ms. Waters doesn't have a reference  
4 point. She doesn't have a way to remember where she was on  
5 the 28th and 21st of May of 2001, and she didn't make one up.

6 She came here and she told you, "I don't remember where I  
7 was. I must have been asleep somewhere because that's all I  
8 can remember." This was four-and-a-half years -- Agent Halla  
9 came to see her in February of 2006 -- four-and-a-half years  
10 after the incident.

11 Now, I challenged myself, and in a general way I challenge  
12 each of you, to think about if I came to you today and I said  
13 to you, where were you four-and-a-half years ago on a  
14 particular night, unless you had somebody's birthday or  
15 something on a calendar or some noteworthy event, I suggest to  
16 you there's just no way you could possibly, in an honest,  
17 reasonable way, say oh, yes, I was here, here or here. She  
18 doesn't have that.

19 She doesn't have the reference point that these two  
20 criminals -- and I say criminals; they have pleaded guilty to  
21 this felony. They have said, "I thought about it. I  
22 participated in the planning, in the carrying out of the  
23 arson, burning down this building."

24 These are two criminals who have come here and testified,  
25 each of whom -- one of whom is facing a mere 35 years

1 mandatory minimum -- that would be Lacey Phyllabaum; and the  
2 other who was facing a mandatory life sentence, Jennifer  
3 Kolar, doing very well for herself, a woman with a yacht, a  
4 woman who was, I have to say it, a serial criminal, a woman  
5 without a moral compass, a woman who just went on and on and  
6 committed at least four arsons, four times.

7       She was involved in preparing, mixing fuel, putting  
8 together devices, planting devices, going to get gasoline,  
9 intending to burn down buildings. That's the woman that they  
10 have put before you that they want you to believe. I will  
11 spend some time specifically about some of the things that she  
12 has done and she has said, and the facts that she has put  
13 forth, as she calls them.

14       You are not going to see a lot of high-tech stuff from us.  
15 We are going to use the overhead projectors, to the extent we  
16 need to.

17       The story that Mr. Bartlett has told you, the propositions  
18 he puts before you as facts, they are facts and they come --  
19 except for the documentary facts -- but the facts that are  
20 critical come from the mouths of Lacey Phyllabaum, Robert  
21 Corrina and Jennifer Kolar. Every count in this Indictment,  
22 every count depends upon the one fact, as I have said and  
23 Mr. Bartlett said: Did Ms. Waters participate in this  
24 criminal act?

25       That's the question, and the answer comes from an

1 analysis, a weighing -- as in every criminal case, not a  
2 balancing who is right, is this right. A balancing is not  
3 what you do in a criminal case. What you do is you look at  
4 the evidence that's presented by the prosecution and you weigh  
5 it. It, in fact, is what's on trial.

6 The Government's evidence is on trial, and it's up to you  
7 to decide: Is this evidence I am comfortable with? If I had  
8 somebody who I knew, who I cared about, who I loved, was on  
9 trial and this was the evidence, would I be happy with this?  
10 Would I say this is okay to convict my friend or my partner or  
11 my relative, based on this kind of evidence? That's what you  
12 are asked to do. That's what you are called on to do.

13 It's obviously a very serious responsibility. You know  
14 what the stakes are. Judge Burgess, during jury selection,  
15 said something that I would like to adopt. He said, in  
16 picking the jury -- he asked each of you in some way or  
17 collectively: "Do you feel you can start from neutral?" I  
18 think that's a very good concept, a very good way to begin  
19 your work and your evaluation.

20 One of the things you have to do is step back and look at  
21 and consider this entire apparatus. We have the Judge, staff,  
22 prosecutors, defendant, defense counsel, an audience,  
23 choreographed, obviously, by Ms. Waters. She dictates who  
24 comes to court. Come on, grasping at straws, Mr. Bartlett;  
25 Ms. Waters doesn't dictate who comes to court.

1       That's not my point. My point is, this whole apparatus is  
2 here, and you think and you feel there must be something here.  
3 This couldn't be happening unless there was something to the  
4 charges.

5       Well, starting in neutral means that you have to put that  
6 out of your head. You have to take each of the pieces of  
7 evidence both, individually and collectively, and think about  
8 them and consider them. Consider if this person, Lacey  
9 Phillabaum, were a person sitting in front of you, across the  
10 table from you, just the two of you, telling you the things  
11 that she's said here, would you want to rely on the word of  
12 that person? I will go into the specifics of her. That's  
13 where we are at. The same with Kolar and the same with  
14 Corrina.

15       So let's start in neutral. Let's talk about the facts.  
16 Before we talk about the witnesses who have been here, I would  
17 like to talk about the one witness who was mentioned by  
18 Mr. Bartlett who is not here, and that's Stan Meyerhoff. He  
19 could be here if they wanted him here because he's a person  
20 who, when he was arrested on December 7th, a little over two  
21 years ago, he agreed pretty quickly that he was going to be a  
22 cooperating witness, and he started giving names of people who  
23 were involved in the many, many arsons that he was involved  
24 in.

25       He was one of the central figures in these arsons. He, as



1 you've heard, pleaded guilty in the Oregon case and his  
2 sentence was the highest sentence of all the people who  
3 pleaded guilty. He's the fellow who knew he was involved in  
4 the planning of what's been called the double whammy, the  
5 University of Washington arson and the arson of the Jefferson  
6 Poplar Farm in Oregon.

7 He is a really knowledgeable person about who was involved  
8 in these arsons. He was naming people. He had no reluctance  
9 to name people. He was naming everybody he could in order to  
10 help himself. One of the people he named -- he went so far as  
11 to name his girlfriend, Lacey Philabaum, to become his  
12 fiancée. He named her, he said she was involved, she was  
13 involved in the planning of the double whammy.

14 There came a time -- and he was not reluctant to name  
15 anybody. In fact, it helped him to name people. The more  
16 people he named, the more it could be said by his attorney and  
17 by him to the prosecutor in Oregon and to anyone, that I am  
18 cooperating, I am doing my best, here's a name, here's a  
19 person who was involved, here are the details.

20 In fact, there came a time on St. Patrick's Day 2006, just  
21 under two years ago, when he was shown a photograph by ATF  
22 Agent Comery, and it was a picture of Briana Waters, and he  
23 looked at the picture of Briana Waters, having said whatever  
24 he said before, and I will go back to that -- having said  
25 something about a blonde woman who originally was from

1 California, not Ms. Waters.

2 He looked at that picture and he said to Agent Comery,  
3 "That woman looks familiar to me, but she was not involved in  
4 any of the arson activities that I was involved in or that I  
5 know about." He said that. He said it. Where is he? Why  
6 don't they call him?

7 It is their burden of proof to call -- to prove beyond a  
8 reasonable doubt and to call the witnesses. That witness is  
9 available to them to call. Wherever he is in prison, he could  
10 be brought here by the prosecution to get up on the witness  
11 stand and say, I didn't say that, I didn't mean that, I didn't  
12 have my glasses on, I am protecting her, whatever else it is.

13 They didn't call him, and please understand that one of  
14 the instructions that you have before you is that your verdict  
15 has to be based on both the evidence and/or the lack of  
16 evidence. What is there to say about looking at that  
17 photograph and saying that woman was not involved? What more  
18 powerful evidence could you have, than the man in the middle  
19 of this conspiracy saying no, she was not involved?

20 If there were nothing else in this case, if we presented  
21 nothing else to you, that would be enough, in my humble  
22 opinion, to say I have a reasonable doubt. Mr. Meyerhoff, he  
23 knows. He knows who did this. He knows who didn't do it.  
24 That's a reasonable doubt. You don't have to listen to  
25 Jennifer Kolar, who doesn't even identify who was at the

1 arson, her partner, her crime partner, Lacey Phyllabaum.

2       What is so odd, a little odd, Mr. Bartlett, would have you  
3 say. It's more than a little odd; it's astonishing. This is  
4 not a woman of limited intelligence, Jennifer Kolar. She's  
5 probably the smartest person in the room, or one of them  
6 anyway, and she said that she doesn't remember any role for  
7 Lacey Phyllabaum in that arson?

8       There's something fishy there. It's not just fishy. That  
9 is a lie. What Mr. Bartlett presented to you was a scenario  
10 that depends upon the credibility of their witnesses, so when  
11 he says that this happened -- this happened and this  
12 happened -- it happened or didn't happen, depending upon  
13 whether or not the person who reported it was telling the  
14 truth.

15       That's what is critical here. It's not a fact because  
16 Mr. Bartlett or Mr. Friedman or I or anybody else say it's  
17 true or not true. It comes from the witness stand. It's for  
18 you to evaluate whether or not this has the ring of truth.

19       For a moment, let's talk about -- before we do talk about  
20 the witnesses who did testify, I want to talk about some other  
21 witnesses who were not called by the prosecution to assist  
22 them in meeting their burden of proof. I repeat -- forgive me  
23 if I repeat -- not only is the burden of proof on them, but it  
24 always stays on them. We don't have to prove innocence. We  
25 think we have, but we are not asking you to make that

1 determination. We are not saying innocent, guilty.

2 We are saying what a jury does in this country, not just  
3 in this courtroom -- in every criminal case in every state and  
4 every federal court in this country, the burden is always on  
5 the prosecution to come forward with evidence that's credible  
6 to prove guilt. Always.

7 So who else did they not call? They did not call Chelsea  
8 Gerlach. They asked Ms. Waters, "Did you know her," the  
9 inference -- the implication being well, if you knew her and  
10 then a whole list of other people, then you must be guilty;  
11 you must be involved in this conspiracy.

12 Well, that's not the way it works. Let them call Chelsea  
13 Gerlach to say I knew her and she was involved in this or  
14 involved in that. Well, they didn't call her because she  
15 wasn't. That is, Ms. Waters wasn't involved with any kind of  
16 criminal activity with Chelsea Gerlach.

17 They didn't call a man named Tubbs for the same reason.  
18 Both Gerlach and Tubbs have pleaded guilty in the Oregon case.  
19 They didn't call either one of them. A guy named Thurston  
20 also pleaded guilty in the Oregon case. They didn't call him.  
21 Suzanne Savoie -- they didn't call her. She's also pleaded  
22 guilty in the Oregon case.

23 Jake Ferguson, the original first person to cooperate who  
24 has pleaded guilty and has been sentenced to probation -- they  
25 didn't call him to say "Ms. Waters -- I knew her, she was

1 involved in one crime or another, one event or another." Of  
2 course they didn't, because she wasn't. She was not involved.  
3 That's clear. We know -- I am not telling you something that  
4 is not easy to figure out -- they would have called each of  
5 these people if there would have been criminal activity.

6 They would have; they had to, because she's accused,  
7 Ms. Waters is, not just of this act but of being involved in  
8 the conspiracy. You have to understand, not to get ahead of  
9 myself, but there were five meetings that are called book club  
10 meetings or incubator meetings, where the participants, the  
11 actual co-conspirators, had meetings. They talked about their  
12 strategy, their planning, their tactics.

13 Jennifer Kolar was there. Lacey Phillabaum was there.  
14 They all have aliases. Ms. Waters was not at a single such  
15 meeting, none. She doesn't have an alias. She's either  
16 Briana or Bri. She was not involved in this. But they list,  
17 I think among the last questions that was asked by  
18 Mr. Bartlett when Ms. Waters took the stand -- he went through  
19 a list of people. "Do you know this one, do you know this  
20 one, do you know this one," suggesting -- wanting to trick  
21 you, if I may say, into thinking that if she knows these  
22 people, she must be involved in the conspiracy. That's just  
23 not a fact. It's not true and it's not fair.

24 Who else did they not call? Well, they didn't call Kenny  
25 Clark, the friend of Jennifer Kolar who was a go-between, at

1 least for messages between Ms. Kolar and Joseph Di bee -- one  
2 of her -- her real crime partner with whom she committed  
3 several arsons. They didn't call him.

4 They didn't call Corrina's wife, Kara Larson, to tell  
5 us -- remember, there was an issue that I will go back to, and  
6 this is kind of a critical issue. Mr. Corrina's position was  
7 that he was waiting at home for Ms. Waters to return with the  
8 car that he says -- the rental car that he rented -- they  
9 rented -- that would be himself and his wife -- to bring back  
10 the car so that it could be returned.

11 He was waiting at home to do that. Well, not that it was  
12 great detective work, but he had said in the beginning of  
13 cross-examination that he had a job, and he named the place  
14 where he had the job. I asked him, "Is that a Monday to  
15 Friday, 9:00 to 5:00 job?" And he said yes.

16 It turns out that the timing -- he's actually proven -- he  
17 has proven that Ms. Waters could not have been involved in  
18 this, and more particularly, that the car that was a rental  
19 car could not have been involved in this incident.

20 How does that happen? Because if he's waiting at home for  
21 the car, it could not have been on Monday, the 21st. It had to  
22 be on Sunday, the 20th, because then he would have been home.  
23 But as we learned, his wife had used that car to take him to  
24 work one day. The only day that could have been was Monday,  
25 the 21st. So he was at work; he was not at home.

1       When I questioned him about that, that was some days ago,  
2 you can believe that they went to his job -- I forget the name  
3 of the corporation or the company -- you can believe that that  
4 night or the following morning they went to his job and they  
5 said, "We need to know if Rob Corrina was at work on May 21,  
6 2001."

7       You can believe that if they had any evidence at all that  
8 he was not at work that day, we would have seen that witness  
9 on the witness stand. You see how thorough they are. They  
10 have got every piece of data on everybody: Briana's mother,  
11 her grandmother, her friends, everybody. They leave no stone  
12 unturned. You've seen data until your eyes glaze over. I  
13 know I have.

14       Who else did they not call? They didn't call a fellow  
15 named Spencer Moen. Who is Spencer Moen? He was the  
16 so-called punk boyfriend of Capitol Hill Girl. He's around.  
17 He's available. They didn't call him. Where is he?

18       How do they meet their burden? They have to meet their  
19 burden of proof by coming forward with credible evidence.  
20 It's their burden of proof.

21       Who else did they not call? A New York Times reporter  
22 named David Carr. You may recall when Lacey Philabaum  
23 testified, I was able to show her a report of our investigator  
24 where David Carr said to our investigator, "Lacey Philabaum  
25 told me that she didn't tell the Feds anything they didn't

1 already know." Well, if that didn't happen, David Carr would  
2 have been here, called by the prosecution, to testify: "No,  
3 she never said that to me, and I never said that to  
4 Ms. Waters' investigator."

5 So they didn't call him -- David Carr. That's another  
6 witness. That's maybe eight, nine witnesses now. Who else  
7 didn't they call? They didn't call anybody from the  
8 celebrated FBI laboratory in Washington to come and tell you,  
9 "We looked at this car -- this rental car; we got a search  
10 warrant -- or the fellow who owns it in Wisconsin now -- this  
11 particular car -- agreed to let us analyze it, we looked at  
12 it, there was depression damage to prove that there had been  
13 an accident on the left quarter panel or the left rear or the  
14 left fender, or whatever part of that car Lacey Phyllabaum  
15 says was damaged."

16 I am not saying that Lacey Phyllabaum is wrong about there  
17 being an accident. On the contrary. I think as to that,  
18 she's credible. There was an accident. But to show -- they  
19 could have shown, had they just taken it to the lab -- they  
20 could have shown Lacey Phyllabaum was right; this is the car.  
21 Whatever the vehicle that was used, whether it was a car or,  
22 as Jennifer Kolar first said, maybe a van -- whatever the  
23 vehicle was that was used, it was not the car that was rented  
24 by Rob Corrina and his partner Kara Larson.

25 They could have proven that it was -- just send the



1 quarter panel or part of the car, or you do something to get  
2 that investigated by the FBI lab which, as you can imagine and  
3 to which there's been testimony, is very capable of performing  
4 that kind of test. You would know, you would absolutely know  
5 that that car, that rental car, was used in this incident,  
6 because it would confirm what Lacey Philabaum said, but they  
7 didn't do that because they knew it was not that car. It was  
8 some other car.

9 Lacey Philabaum made a big fuss, "Well, we have to get a  
10 rental car for these kinds of actions; you have to get a car  
11 that's not associated with any of the people who were involved  
12 in the incident." That's false. That's a lie. I think we  
13 cited maybe seven or eight different instances where at some  
14 of these activities, some of which were arsons, one of which  
15 was a crop pull and one of which was what she called a  
16 girdling operation, that they took -- those people who  
17 participated in it, not Ms. Waters; she was not involved in a  
18 single incident, nothing, not a crop pull, nothing -- but the  
19 people who were, they used their own cars.

20 Joe Dibee took his car to Susanville. Stan Meyerhoff took  
21 his car to Susanville. Kolar took her car to the Wray Gun  
22 Club in Colorado. So the tale that Ms. Philabaum tells in  
23 order to conflate or suggest that you have to get, let's call  
24 it an outside car, rental, borrow, whatever it is -- that's  
25 just false. That's just not true.

1        So there are all these people they didn't call. They have  
2 Count 1, this conspiracy count, and I don't know if you are  
3 going to see the Indictment or not, but there are 25 what they  
4 call overt acts which are listed in that Indictment. One  
5 would be the Cavel arson. Another would be the Susanville  
6 arson, and another would be the Center for Urban Horticulture,  
7 the University of Washington arson.

8        There were 25 overt acts. Ms. Waters is named in one  
9 overt act. She's alleged to have participated in the  
10 University of Washington arson. Everything is in there, and  
11 you may recall the first witnesses after the arson  
12 investigators -- I am sorry, the firefighters -- they talked  
13 about all those other acts, with no mention of Ms. Waters.  
14 Just to lay it on you, this is a serious crowd and they burn  
15 down a lot of things, and indeed they did. Lacey Phyllabaum  
16 was one of them, and Jennifer Kolar was another.

17        While I am on the first witness, it is true that I got  
18 this document and it said the first response was at 4:15. I  
19 asked firefighter Priest about it. He didn't remember it. I  
20 think the following day or the next witness was another  
21 firefighter, and we became convinced that it was just a typo,  
22 so it never got pursued.

23        To suggest that -- remember, this is the first witness,  
24 and we see a document that shows a serious discrepancy that  
25 the response wasn't at 3:23, it was almost an hour later. I

1 chose to ask a question about it. I didn't scream at witness  
2 Priest. I just said, "Does this ring a bell," and he said  
3 "No," and we dropped it. We learned later that it was  
4 probably a typo.

5 I am not quite sure what the point was about -- do we go  
6 after and say everyone is a liar? No, we are not saying that  
7 everyone is a liar. We are saying where the evidence supports  
8 it, certain people did not tell the truth.

9 I will go back to Lacey Phillabaum for a moment. It took  
10 forever for us to get out of her that she indeed had told the  
11 FBI, the Feds, what they already knew. I am going to get back  
12 to it in a little while but -- maybe I should read it now.

13 Reading from page 146 of her testimony, the second day's  
14 testimony, I asked her:

15 "Question: That's what you meant, that nobody is  
16 going to prison because of you?"

17 Then she answered:

18 "Answer: I didn't think I had given any names that  
19 the federal authorities did not already know."

20 She denied it four or five times before she finally came  
21 out with it. Now, how did she know what they already knew?  
22 How did she have any information about what they already knew?  
23 We've heard from Mr. Corrina. We've heard that his wife Kara  
24 Larson told him that on January 19th of '07, when Agent Halla  
25 and Mr. Friedman entered her place of employment -- she worked

1 for an agency of the State of Washington, I believe, a place  
2 where Mr. Friedman yelled at her.

3 One thing that Agent Halla did -- and I am not saying he  
4 did it maliciously, and I have no idea if he did it  
5 intentionally -- what's clear is that he did tell her, "We  
6 believe that the car you rented was used in an arson at the  
7 University of Washington."

8 A questioner -- common sense tells you that a questioner  
9 is not supposed to give information to the person being  
10 questioned because it's leading; it's being suggestive.

11 We know that they did the same kind of thing when they  
12 went and got Joe Di bee. They came and talked to him, and they  
13 gave him information. Unfortunately, it's the way they  
14 sometimes work, and they shouldn't do that, but once you do  
15 it, then the person has information, and if the person wants  
16 to, quote, tell them what they already know, he or she -- in  
17 this case, Lacey Phillabaum -- has a clue about what they  
18 already know.

19 How did that happen? Frankly, I was thinking this week,  
20 if I am going to give a closing argument, what happened here?  
21 Something struck me as I read the Lacey Phillabaum transcript.  
22 She talked about how she told her parents about what was  
23 happening, and she jumped on it and she said my parents, you  
24 know, my lawyers -- I spoke to them as my lawyers.

25 What is that about? I thought, that's a little bizarre.

1 I thought maybe it was just kind of a personality quirk.  
2 That's very important, because here's the way they did it.  
3 Here's how she figured out what they already knew and what it  
4 is she should be saying to them. It's really important,  
5 because an important part of their argument is "I have Kolar  
6 saying it" and "we have, independently, Lacey Philabaum  
7 saying Briana Waters was involved." Well, it wasn't  
8 independently at all.

9 Lacey Philabaum told them what she believed they already  
10 knew. How did she know that? Because innocently -- I am not  
11 saying her father did anything wrong. On the contrary, I  
12 think her father did -- when he was contacted by the FBI,  
13 obviously the FBI told him some things, and he, as a father  
14 and a lawyer and a person who loved his daughter, was sharing  
15 information with her. That's how she figured out what they  
16 already knew, because that's how the information got to her.

17 You know what? We can't call him as a witness because  
18 he's her lawyer, the father is her lawyer, and he would get up  
19 there and say "lawyer-client privilege; I am not going to  
20 testify." That was what the fuss was about. That's why she  
21 said, "Yes, not just my father, but he's my lawyer, as is my  
22 mother; they are my lawyers." That's what that is about. So  
23 that he can't tell you, "The FBI gave me the information and I  
24 passed it on to her."

25 That's how she knew what to say to help herself, because

1 what do they want? They want it to be consistent with the  
2 other information they have. If you look at the timing --  
3 speaking of timing, supposedly Jennifer Kolar -- and it's  
4 probably true -- two weeks after she first spoke to Mr.  
5 Friedman and the agents, December 16th, the day we'll spend  
6 some time with, she says that apparently she contacted her  
7 lawyer, Mr. Martin, and she said the person who was the  
8 lookout, I just remembered, with my little feeble mind -- I  
9 just remembered that it was Briana Waters.

10 Well, of course, I am being sarcastic when I say feeble  
11 mind. She had quite the opposite of a feeble mind. She knew  
12 very well and she knows very well what she is doing. She's  
13 also a sociopath, a person who has committed four arsons.  
14 She's walking the streets now. She will be sentenced sometime  
15 after this trial. They are holding it over both their heads.  
16 They are not getting sentenced until after this trial because  
17 they don't want them to go sideways on them.

18 But Jennifer Kolar is on the street now. She's out there.  
19 She's a four-time arsonist. She is going to get probably  
20 seven years, maybe five years, depending upon what Judge  
21 Burgess decides to do.

22 This woman tells her lawyer at the end of December of 2005  
23 that Briana Waters was involved in this case; she was the  
24 lookout. On January 5th, a few days later, her lawyer, Mr.  
25 Martin, tells Mr. Friedman of that conversation. The very

1 next day, there's a scheduled meeting with her -- an interview  
2 with her, January 6th. They do not ask her a single question  
3 about Briana Waters being the lookout.

4 What kind of police work is that? That's not logical.  
5 Common sense tells you that if they believed that was true,  
6 they would say: "Ms. Kolar, your lawyer told us yesterday  
7 that you remember that Briana Waters was involved as the  
8 lookout."

9 Common seasons tells you that. But they made a choice, an  
10 intentional choice, not to ask her. They didn't ask her on  
11 January 6th. They didn't ask her the next time on January  
12 12th, January 13th, I think January 27th, a couple times in  
13 February, and they don't ask her about it until after Lacey  
14 Phillabaum has come in and told the FBI what she believed they  
15 already know.

16 What's the significance of that? Why would they not ask  
17 Jennifer Kolar? Well, they know that on December 16th she  
18 gave -- and even Agent Halla said so -- she gave five names:  
19 herself and four other people. In fact, she confirmed that --  
20 something Mr. Bartlett failed to tell you in his closing  
21 argument this afternoon -- she confirmed that she gave those  
22 names as the participants in the crime in October of last  
23 year.

24 She spoke to Mr. Bartlett and he asked her: "Do you  
25 remember what happened in that first interview, December 16th,

1 with regard to these names, these particular names, Capitol  
2 Hill Girl, Boyfriend, Crazy Dan, Avalon and herself?"  
3 Remember, no Briana Waters. Very important, the first time  
4 she did not remember Briana Waters.

5 What happened? She told Mr. Bartlett, "Yes, I've  
6 identified those people, myself and those four other people,  
7 as the participants." Mr. Bartlett chose not to tell you that  
8 this afternoon.

9 Mr. Bartlett put on the screen for you Agent Torres' notes  
10 from the interview on December 16th and talked about -- yes,  
11 one, two, three, four, five. Before you look at what's on the  
12 screen, I would ask that you consider what does that mean when  
13 Agent Torres sat there -- she gave names; he puts the numbers  
14 one, two, three, four, five next to them. Is there any doubt  
15 that you are being deceived when you are told that it was  
16 anything other than those five participants? That's what she  
17 said. That document is in evidence, and I ask you to look at  
18 it.

19 Now, look at the page before that's on the screen. I have  
20 talked about this, and I just want to point it out. When the  
21 agents and Mr. Friedman were interviewing Jennifer Kolar about  
22 a different crime -- this is just one page before the  
23 University of Washington -- they were interviewing her about  
24 Susanville, and it says Susanville, and she listed the names  
25 of the people that she remembered were present at the



1 Susanville crime.

2       Where she did not remember, where she was not sure, she  
3 said to them, "I'm not sure." That's why Agent Torres, of  
4 course, wrote "not sure" next to three of the people. There's  
5 no getting around that. They are fooling you if they tell you  
6 otherwise. It's not true. She said about Susanville --  
7 where's she's not sure, she's not sure, but when it came to  
8 the next event, the University of Washington, there's no "not  
9 sure"; she was sure. She gave them the five participants, and  
10 in August of last year, she reaffirmed that to Mr. Bartlett.

11       I want to talk some more about Jennifer Kolar. I don't  
12 mean to be harsh, and I feel bad that she's going to prison.  
13 She was a dedicated person, involved in the environment.  
14 Frankly, she went bad. She committed four arsons. At first  
15 she told them she committed three, and then she remembered the  
16 fourth.

17       This is a person with a criminal mind, as I said earlier,  
18 a person without a moral compass, a person who really, really  
19 doesn't care for anything but herself. She is a woman of some  
20 means, she has a yacht -- or she just sold it apparently --  
21 and she is a woman who does well at her work. She was  
22 involved in planning four arsons. She was involved in  
23 executing four arsons. She mixed fuel. She bought fuel. She  
24 went with her then boyfriend, Joe Dibee, to commit these  
25 crimes. She thought them through.

1        She did that. She's a criminal. She's a person who, if  
2 you just step back and knew nothing about this case and you  
3 heard, here's a person who in a period of a couple, three  
4 years committed four arsons, burned down four buildings, you  
5 are thinking, there is a person that worries me; here is a  
6 person that I am wondering if I can really accept the word of  
7 such a person. She planted devices. She increased the fuel  
8 load.

9        We talked about character. We talked about integrity.  
10 It's not there. Jennifer Kolar. Intelligence, yes. Honesty,  
11 no. How do we know she's lying? Well, she's lying  
12 specifically about today. She got up there and lied to you in  
13 your faces, and in our faces. She lied to you about who  
14 committed the crime at the University of Washington.

15        She's telling you that Lacey Phillabaum -- I don't  
16 remember Lacey Phillabaum being there. I am not talking  
17 about, do you remember -- I think I may have said this at the  
18 trial during the cross-examination -- do you remember. This  
19 is not about what kind of wine did you have two months ago at  
20 a particular dinner.

21        This is -- she doesn't remember, she says, that Lacey  
22 Phillabaum was one of four other people with whom she burnt  
23 down this majestic building. That's not a mistake. That's a  
24 lie. She sat up there, swore to tell the truth, took an oath  
25 to tell the truth, and she has lied in this very courtroom,

1 and they are asking you to rely on her to convict Briana  
2 Waters.

3 She was facing -- when she went in on December 15th of '05  
4 to speak to the prosecutors and FBI, she was facing life in  
5 prison, the rest of her life in prison, and she decided, I  
6 don't want to do that. I am going to cooperate.

7 On that day, they said to her, "Tell us who committed this  
8 crime that took place four-and-a-half years ago." They were  
9 thinking, this is a crime that they have been wanting to solve  
10 for a long time. It was a big deal, and it is a big deal.  
11 And here was the first person who was going to be telling  
12 them -- the first person -- who committed the crime.

13 Unfortunately, Agent Torres was there and he took careful  
14 notes. Agent Halla was there, and he took less careful notes.  
15 That happens. When you are taking notes, you are busy  
16 listening, so he only wrote down Capitol Hill Girl, but Agent  
17 Torres wrote down all the names, and he put numbers next to  
18 them.

19 When Ms. Kolar talked about who had committed that crime,  
20 one person that she did not say committed the crime was, of  
21 course, Briana Waters. She was there, and the very first  
22 thing that she was told was how important it is to tell the  
23 truth. She was told that by Mr. Friedman, and presumably she  
24 was told that by her lawyer. So she sits there and she gives  
25 them names: Capital Hill Girl, Boyfriend, Crazy Dan, Avalon

1 and herself.

2       What does it mean when you are asking somebody who's  
3 telling the truth, who committed the crime, and she says names  
4 that don't include persons she eventually comes to accuse?  
5 How do you evaluate that?

6       Well, it's not difficult. I have to say, of all the  
7 difficult decisions that you are going to have to make in the  
8 jury room, this may be the easiest. This woman is a liar and  
9 not to be trusted and not to be believed. It's simple.  
10 There's absolutely no question that she is a liar, none.

11       The question is, do you feel comfortable convicting  
12 anybody, much less, if I may say, an innocent person? You  
13 know the consequences here. You've heard them. There's no  
14 secret.

15       The day after, or a year after, if Briana Waters gets  
16 convicted, you're always going to be thinking, I really have a  
17 doubt. I can't believe that I convicted somebody based at  
18 least in part on the testimony of Jennifer Kolar. I can't  
19 believe it.

20       Remember, as I mentioned, they are holding sentencing over  
21 her head. She's not going to be sentenced until after this  
22 trial so that she couldn't come in here and change her mind.  
23 If she had been sentenced a couple of months ago, she could  
24 come in here and say "No, I was lying about Briana Waters,"  
25 and they wouldn't have any recourse. So that's why -- one of

1 their techniques is they hold it over their heads, both Lacey  
2 Philabaum and Jennifer Kolar.

3 Why does she lie about Briana Waters? She realized that  
4 some of what she had told law enforcement people on the 16th  
5 of December was not true and that they would soon know that,  
6 so she had to come up with another name.

7 Now, we don't know -- I can't say to you -- we can't get  
8 into her head, and we can't say to you that the reason she  
9 chose Briana Waters was because a few years back Briana Waters  
10 has rejected her. It is a fact that Briana Waters rejected  
11 her, and we know that not only from Briana Waters, we know  
12 from the way she answered the questions about her interest in  
13 a same-gender relationship.

14 She got very nervous, and I understand she would. It's  
15 not a comfortable position for her to be in, to be exposed in  
16 public like that. But she said "Oh, I don't remember when it  
17 was, maybe a long time ago," and then she had to  
18 acknowledge -- now we have in evidence -- I don't need to read  
19 it -- we have in evidence her e-mail to a friend of hers,  
20 explaining her interest, her real interest in another woman,  
21 how she was pursuing that other woman, she was on her way to  
22 the restaurant where that woman was working, and she was  
23 wondering if she herself, Kolar, would have the nerve to ask  
24 her out.

25 So, when faced with proof -- Jennifer Kolar is faced with

1 proof that she had indeed put in writing her interest in  
2 women, she stumbled through it and she said "Oh, yes, now I  
3 remember." It's kind of a familiar scenario, if you remember  
4 how Lacey Phillabaum suddenly remembered certain things about  
5 Justin Solondz when she was confronted with staying in his  
6 cabin. I will talk about Lacey in a little while.

7 Just one more thing about Kolar not naming Phillabaum.  
8 Phillabaum has pleaded guilty to this crime. Not only is it a  
9 lie, but -- I don't speak for you, but everybody in this  
10 courtroom knows it's a lie. Everybody. Everyone.

11 Trust me, it would not be fair, it would not be right, it  
12 would not comport with the Constitution; it would not comport  
13 with whatever theological beliefs you may have; it would not  
14 comport with morality to count on or to in any way rely upon  
15 the testimony of this woman. It's just not right.

16 What does it mean that Kolar spoke to Mr. Bartlett last  
17 August and reaffirmed to him that indeed she had named herself  
18 and the other four people as the participants? That's the  
19 wording of his sworn statement. What does it mean that he can  
20 hear that from her, and then he can come up and tell you she  
21 was vague about it. I dare say, we are not judging the  
22 credibility of Mr. Bartlett. We are judging the credibility  
23 of the witnesses.

24 But I suggest to you that the arguments that Mr. Bartlett  
25 has made before you, while eloquent, really cannot be relied

1 upon if he's going to tell you, in the face of what Ms. Kolar  
2 told you last August, that she was vague about what she said  
3 in that first interview. That just is not square. Those two  
4 items do not square.

5       Why is it -- let me get back to the question I had  
6 approached -- why is it that for two months, in the seven or  
7 so interviews with Kolar, January 6th to March 6th, that they  
8 don't ask her about Briana Waters? In fact, Briana Waters'  
9 name came up. There was a picture. There was some  
10 conversation, and when it came up in one or more of those  
11 seven meetings in those two months, there was conversation  
12 very briefly about Briana Waters.

13       At no time -- not only at no time did they ask her about,  
14 is this the woman that you say was the lookout, which defies  
15 logic, defies common sense, but at no time when the name came  
16 up did Kolar say, "That's the woman I am talking about; that's  
17 the woman who was involved as the lookout." That also defies  
18 common sense. What is that about? Why is it not in any of  
19 their reports between January 6th and March 6th?

20       Well, you have heard and you have seen, both in the FBI  
21 regulations that we have talked about and in testimony, that  
22 there's a process called discovery. When somebody is accused  
23 of a crime, eventually they get documents.

24       If there is a document -- let's say Kolar changed her mind  
25 and said it was Joe Smith or Joe Di bee who was involved in

1 this arson, the lawyer for Joe Smith -- let's call it -- would  
2 eventually get the document where she said Briana Waters was  
3 involved. So Joe Smith's lawyer could use that to impeach  
4 Kolar. That's why there's no document. That's why they  
5 didn't talk to her. It wasn't about letting her chill out.

6 They didn't want to create another document that would  
7 further undermine her credibility as to which they clearly had  
8 doubts. If you don't doubt it, if you think she's telling the  
9 truth, then you ask her about it and you document it. But  
10 they didn't want to do that because there would be a trail of  
11 her naming Briana Waters that could be used by the lawyer for  
12 the next person to impeach Jennifer Kolar.

13 That's the reason they don't ask her in those seven  
14 meetings that took place in those two months. They don't want  
15 to create a paper trail that would help the next person she's  
16 going to lie about.

17 Think about it for a moment, if you are sitting there and  
18 you are an investigator or an Assistant United States  
19 Attorney, and you have information that Briana Waters -- from  
20 the witness sitting in front of you, that Briana Waters was  
21 the lookout, the first thing you are going to say is, in this  
22 crime that they have been trying to solve for four-and-a-half  
23 years -- you are going to say, is this the Briana Waters --  
24 tell us about Briana Waters. Your lawyer told us that you  
25 named Briana Waters. Who is she? What happened? When did



1 you meet her? Who is she? What does she look like? Where  
2 does she live? That's what they do in investigations. That's  
3 what they are supposed to do. That's what they should do.

4 Again, we don't know if the reason she chose to name  
5 Briana Waters is because Briana rejected her at some point,  
6 which would have been toward the end of 2001 or early 2002,  
7 before Briana moved to the Bay area.

8 What we do know is that Jennifer Kolar is what  
9 criminologists and law enforcement people who are objective  
10 would describe as a sociopath. She's committed at least four  
11 arsons -- planned, not happenstance, not spur of the moment;  
12 she's helped put together devices, she's bought gasoline,  
13 she's mixed gasoline, she's bought soap, she's mixed fuel.

14 This is not just the casual participant. This is a  
15 central figure, with her former boyfriend Joe Dibee and by  
16 herself. Joe Dibee wasn't even in Colorado when she and  
17 another friend of hers tried to burn down the Wray Gun Club.

18 Let's move on to another interview with Kolar. One of the  
19 interviews in that two-month period, January to March, was  
20 February 4, 2006. That was the day that she and Agent Halla  
21 and Agent Torres drove down from Seattle to Olympia to look  
22 around, to look at buildings and to talk, and they interviewed  
23 her.

24 We know because Agent Halla's notes tell us so, that what  
25 Jennifer Kolar said to the two agents on that day, whether

1 they were driving or stopped, but at a time when Agent Halla  
2 was taking notes -- we know because he wrote it, and what  
3 Jennifer Kolar said to them was, "I don't remember Briana and  
4 Lacey together." That's what he wrote. That's what she said.

5 Now, what does that mean? That means, obviously, that if  
6 they were not together, Briana Waters could not have committed  
7 the crime because we know that Lacey Philabaum committed the  
8 crime. We know that Briana Waters could not have been at the  
9 restaurant before the arson. We know that she could not have  
10 been in the vehicle, either going to the restaurant or leaving  
11 the restaurant or leaving the scene of the arson, if they were  
12 not together.

13 We know that they couldn't have been together at a time  
14 when there was a claim, at this meeting at Evergreen -- by the  
15 way, I am going to talk about that. Why would there be a  
16 meeting at Evergreen? Why in Heaven's name would you create a  
17 record -- if you are going to have a meeting about an arson,  
18 why would you have it in a room where Briana Waters could have  
19 been seen, where the other people could have been seen, where  
20 there could have been a record of getting a room? Ridiculous.

21 Why? Because Lacey Philabaum thought that was her clever  
22 way, her debater way, her Cum Laude graduate with honors way,  
23 her three-year graduation -- her three-year finishing school  
24 way, her intelligence, her cleverness, her deviousness, how  
25 can I hook Briana into this. If I claim that Briana was

1 involved in it that is going to be credible, I have to say  
2 that there was a meeting at Evergreen.

3 I will get to Lacey in a minute, but just keep in mind  
4 that she's as clever as she can be. But she tripped herself  
5 up, and we'll talk about it in a while. But back to Jennifer  
6 Kolar.

7 On February 4th, either in the car or in Olympia, it's  
8 conclusive -- if Lacey Philabaum and Briana Waters were not  
9 together, Briana Waters could not have committed the crime.  
10 It's conclusive, dispositive evidence, and that came out of  
11 the mouth of the other witness, Jennifer Kolar.

12 What did they do? Instead of including that language in  
13 their typed 302, they changed it. They changed it to, they  
14 were not close friends, a completely different meaning.  
15 Because they understood, and they understand as they sit there  
16 now, how conclusive, how important, how devastating it is that  
17 if Lacey Philabaum and Briana Waters are not together, it  
18 means Briana Waters could not have committed the crime. It's  
19 as simple as that.

20 Now, how do we know that's what happened? Well, we know  
21 because Agent Halla did the handwritten notes, but we also  
22 know -- or we could know some other way -- exactly what was  
23 said because Jennifer Kolar made a tape recording of that  
24 date, that day's events. What she said is on tape.

25 Now, Jennifer Kolar is a cooperating witness. If they

1 wanted to, they could just say to her lawyer, give us the tape  
2 as part of her cooperation agreement. It is not -- anyway,  
3 think of common sense. It is not a lawyer-client  
4 connection -- conversation. It's a conversation with Jennifer  
5 Kolar and two FBI agents. This is not a conversation between  
6 a lawyer and a client. This is not protected. Mr. Martin,  
7 the lawyer, couldn't say "no, no, this is lawyer-client."  
8 It's not lawyer-client. It's a conversation between a witness  
9 and two agents. They could get it in a minute if they wanted  
10 to, but they don't want you to hear that because that's where  
11 she says, "I don't remember Lacey and Briana being together."

12 Now, there's also no tape for the very first interview,  
13 the infamous December 16th interview. The FBI regulations, as  
14 we see, provide for taping confessions or possible confessions  
15 or statements by anyone they want to. There's provisions.  
16 All you have to do is go to the Special Agent in charge of the  
17 office and say, we want to tape it. That's why we don't have  
18 to be experienced with law enforcement work. From everything  
19 we know, we see true story after true story. Forget Law and  
20 Order, but the true story that you see on television about  
21 confessions.

22 Police tape confessions all the time. That's what they  
23 do. That's what they are supposed to. Why do they do it? So  
24 that there won't be any doubt that there was really a  
25 confession. Both Lacey Philabaum and Jennifer Kolar each

1 came in on different dates, December 16th for Kolar, February  
2 21st apparently for Phillabaum, and they make confessions.

3 Now, maybe at the very first moment it wasn't clear there  
4 was going to be a confession, but as soon as it was clear they  
5 were told by the lawyer, "She's going to tell you what  
6 happened," you get a tape recorder. You don't hide it. You  
7 are in Mr. Friedman's office. You don't think they have tape  
8 recorders in the U.S. Attorney's Office?

9 Is it okay if we tape this; or we are going to tape this,  
10 is that okay? You don't think they could have done that if  
11 they wanted to do it? Well, maybe the FBI doesn't do it as a  
12 policy. Maybe they do. But we haven't heard about the policy  
13 of the U.S. Attorney's Office. There's Mr. Friedman, the guy  
14 who yelled at Kara Larson. You don't think he has the  
15 wherewithal to get himself a tape recorder and say okay,  
16 Jennifer Kolar, we are going to put this on tape?

17 That way, there wouldn't be any confusion, falsification,  
18 dispute, if you believe it, between the agents about what she  
19 said. It would be right there. You'd hear it. Capitol Hill  
20 Girl, Punk Boyfriend, Crazy Dan, me and Avalon. That's what  
21 you'd hear.

22 Just one last word on Jennifer Kolar. She was facing life  
23 in prison. She has bought her way out. They are holding the  
24 sentence over her head to see what she did here. She's going  
25 to keep her deal because she came in here and she said what

1 she was supposed to say. She said Briana Waters committed  
2 this crime. So she's all right now. She has bought her way  
3 out of a life sentence. I pray to you that you don't let  
4 Briana Waters fall, based on the testimony of this very  
5 unhealthy person.

6 Let's talk about Lacey Phyllabaum. One of the first  
7 questions she was asked is, "Do you bear any ill will toward  
8 Briana Waters?" And her answer wasn't yes or no. Her answer  
9 was, "I have sympathy for everyone in this case, or these  
10 cases." She didn't answer the question.

11 When I was able to talk to her on cross-examination -- of  
12 course we didn't talk to her any time before that because she  
13 wouldn't talk to us -- I asked her: "In fact, you do bear ill  
14 will toward Briana Waters because you had an affair with her  
15 boyfriend, Justin Solondz, she found out about it and she  
16 called you lots of names." She said "No, no, no, nothing like  
17 that happened." Then I asked her another time, and she said  
18 "Oh, now, that you say it, now it is ringing a bell." Now,  
19 come on.

20 Again, we are talking about a witness upon whom they are  
21 relying to come -- and they are claiming this is a woman who  
22 is a truth teller. This is a woman who has found the  
23 spiritual way, she says. She wants to shout it from the  
24 mountaintops that I am now here, I am born again. That's what  
25 she's telling us: "I am an honest person," and she comes in

1 here and the first thing she does is she lies about -- forget  
2 the affair part, just about the confrontation between her and  
3 Ms. Waters.

4 After she says, "Gee, now that you mention that, she  
5 called me unprincipled; now it rings a bell." Also, this is a  
6 woman who is pretty much as smart as Jennifer Kolar, and she  
7 tells you and she wants you to believe, "Yeah, I didn't  
8 remember that about what happened to me and Briana Waters."  
9 Well, I submit to you that's a lie. She has lied to you in  
10 this courtroom.

11 Let's go back to some other testimony. She indicated that  
12 one of the book club meetings that she went to, and Jennifer  
13 Kolar went to -- I think it was the middle of the third one --  
14 she had been -- Phillabaum had been at all of them -- was at  
15 all of them. She had an alias, Reba, and she thought she  
16 remembered, but wasn't sure. Another lie.

17 At the third meeting -- I think that was the one in Santa  
18 Cruz, California -- they learned ways to communicate  
19 anonymously, to use proxy servers, whatever that is, in  
20 computer work, to use codes. And Kolar -- her first meeting,  
21 her first book club meeting, Kolar was an instructor and she  
22 brought a disk for everybody. It's called a PGP disk where  
23 you can encrypt messages so that law enforcement cannot read  
24 your messages. That's these two people at this meeting, this  
25 book club meeting in Santa Cruz.

1 Well, they also learned lock-picking, breaking windows,  
2 breaking and entering. We're talking about criminals here.  
3 We are not talking about people who they dress up. She wanted  
4 to wear civilian clothes. Remember she told you that? She  
5 was wearing her jail outfit, looking pretty tragic and  
6 pathetic. She walked in here and she sat there and she looked  
7 sad and contrite and remorseful. She wanted to wear civilian  
8 clothes, but the Prosecutor said "No, you wear those jail  
9 clothes." Why? Why would they say that? Because they want  
10 her to look pathetic, contrite and remorseful. That's what  
11 happened here.

12 That's the way she looked. That was her act, until the  
13 afternoon when, had it been a movie, the director -- and she  
14 came out with her obscenity -- had it been a movie, the  
15 director would have said cut, cut, cut. Listen, Lacey, you  
16 are supposed be pathetic and sad, and not confident and  
17 tragic. You can't do that. You can't say words like that.  
18 You can't do that; let's do this again.

19 But it's not a movie. It's a trial. There she was,  
20 having first denied, having first denied that she had any  
21 sexual relations with Justin Solondz, she pretty much admitted  
22 it. When did she admit it? When she was confronted with the  
23 302 form where she, for whatever her reasons, she told the  
24 agents -- I think Agent Halla was one of them -- that she had  
25 gone to Justin Solondz' cabin.



1       No reason she went to that cabin, except for one reason,  
2 and she knew that. She knew when she was shown that document  
3 or when she was read that information; she knew she was  
4 snagged. She knew there was only one reason. She already  
5 said she went there and sat on the bed. She had told them in  
6 that interview that he took a nap.

7       Now, this is not about criticizing her or trashing her for  
8 having a sexual affair with any particular person. That's not  
9 what it's about. It's about the confrontation that later  
10 happened between her and Briana Waters. That's what it's  
11 about. But there came a time on the witness stand that this  
12 person just busted out. I asked her about what were you doing  
13 in that cabin, more or less. She said "I did not have sex  
14 with that man," or "I did not have sex with him." And I kind  
15 of, in a light question, said, "Do you remember Bill Clinton,"  
16 and she came out with "I did not" -- and I don't need to say  
17 the words; I am sure you remember them.

18       You could feel the courtroom change. You could feel that  
19 this is a woman that busted herself -- her act. It's  
20 absolutely invalid anymore. She was not a person -- she  
21 revealed herself to be not the person she was portraying.

22       Then after that, she couldn't remember anything about May  
23 20th and May 21st. She couldn't remember what time of day she  
24 said that they left from Olympia to go to Seattle. Was it the  
25 morning? I don't remember. Was it the afternoon? I don't

1 remember. Was it the evening? I don't remember.

2 I think what busted her most was when she was confronted  
3 with the memorandum that our investigator prepared after our  
4 investigator had spoken to the New York Times reporter,  
5 Mr. Carr, who was her mentor, and she said that Mr. Carr had  
6 told our investigator that she, Lacey Philabaum, had told  
7 Mr. Carr, "I didn't tell the Feds anything they didn't already  
8 know." It's such a critical concept that she would be telling  
9 us, anybody, that "I didn't tell the Feds anything they didn't  
10 already know."

11 What's so important about that is -- I have said it  
12 before, and I want to repeat it -- that their claim is that  
13 she was an independent witness, independent from Jennifer  
14 Kolar, that she came up with Briana Waters' name on her own.  
15 Well, in fact, she did not. For whatever reasons, in whatever  
16 way -- and my surmise is that she got it through information  
17 given to her father. I want to repeat, I don't think the  
18 father did anything wrong whatsoever. He did exactly what a  
19 father should do. He told her the information he had.

20 But once she saw that David Carr, a person whose respect  
21 she wanted, no longer respected her, I suggest to you that's  
22 about when she gave it up. That's when she became who she  
23 really was: a person who would lie, who would come out with  
24 that obscenity for no reason, who would try to deceive you,  
25 who said at that point, which is probably true, "I don't

1 remember what time of day," I don't remember the script  
2 anymore. I don't remember what I am supposed to do. Did we  
3 leave Olympia in the afternoon? Did we leave in the morning?  
4 Did we leave in the evening? I don't remember. I don't  
5 remember. I don't remember. That happened all after the  
6 David Carr event and the obscenity that she came out with.

7 A little more about Lacey Phillips. She went and did a  
8 crop pulling. Not a word about Briana Waters being involved  
9 in that. She went to another place, and she did a girdling of  
10 trees. The woman is a criminal. It wasn't an arson. Those  
11 two weren't arsons, but they were criminal activities, and she  
12 knows it, and they know it, and we know it.

13 She told us that Stan Meyerhoff, who became her boyfriend  
14 after she -- Stan Meyerhoff had been the boyfriend of Chelsea  
15 Gerlach, and they were just breaking up also. That's her MO,  
16 to tell you that, "Oh, yeah, I got involved with that guy  
17 because that couple was just breaking up." That was her  
18 excuse with Justin Solondz.

19 So Stan Meyerhoff, she told us, was one of the people who  
20 planned the double whammy, the University of Washington event  
21 and the Jefferson Poplar Farm event the same morning. Then  
22 she said -- she started to talk about this incident. This is  
23 on direct examination, and she said that the meeting at  
24 Denny's a week before the arson in Olympia is the first time I  
25 saw Briana Waters.

1        That was a lie, and we know it is a lie because Sarah Wald  
2 came in and testified before you, and there was not a single  
3 question from anybody at that table of Sarah Wald. Sarah Wald  
4 explained that in February, the first week in February of  
5 2001, there was a meeting with 20 to 25 people, that Justin  
6 Solondz was there, Briana Waters was there and Lacey  
7 Phillabaum was there, and that Lacey Phillabaum was one of the  
8 facilitators of the event; they broke into three groups.  
9 There's no question that everybody knew everybody that was  
10 there, and in the evening there was a party; Briana played the  
11 fiddle.

12        There's no question that Briana Waters, who testified that  
13 she remembered meeting or seeing Lacey Phillabaum at that  
14 event in February -- not in May, in February. What's the  
15 significance of it? The significance of it is that she, Lacey  
16 Phillabaum, came and she lied to you. She lied that this was  
17 the first meeting, and there were details around the meeting  
18 of what happened at Denny's, assuming people who are getting  
19 ready to commit an arson are going to meet in a public place  
20 like Denny's.

21        She made up a detail. She's a debater, you may recall.  
22 She is very clever. She made up a detail, and in order to  
23 make it credible, she said, this is the first time so that it  
24 would be -- she was pretending this would stand out in her  
25 head, this is the first time I met her.

1 Well, she had met her at least there the first week in  
2 February and then a few weeks later at what's called the ELAW  
3 conference; she met her there, too. So it wasn't in any way  
4 the first time she met her. The importance is the drama that,  
5 "Oh, I remember this is the first time I met her" is  
6 completely false.

7 She also made up another lie. She lied and she said that  
8 at the time she went to -- she says she went to Conger Avenue,  
9 and she saw Briana Waters in the kitchen playing the violin,  
10 and this was the weekend of the incident, the arson. That  
11 could not have been.

12 You heard Haila Silvertrees, the mother of Ocean, testify.  
13 You heard Heather Moore testify. At that time, in May of  
14 2001, that house -- that kitchen was under construction.  
15 She's not going to be playing the violin in the kitchen while  
16 it's under construction. That's crazy.

17 She also said Briana Waters was not living there at the  
18 time she says she was there in May. Well, she wasn't there in  
19 May. There was no clean room in May. You have seen the  
20 manual. You don't do a clean room where somebody lives.  
21 There was no clean room. There was one room in the garage.  
22 You don't do it. It's clear; it's explicit in the manual.  
23 There's skin flakes and there is hair. You don't want to have  
24 DNA evidence.

25 It could not have possibly been there if Briana were a

1 participant. But Lacey Phillabaum has a story to tell, and  
2 she has a story to tell -- it has to be consistent with what  
3 she believed the FBI already knew. That's the key to it.  
4 That's why it had to be Briana Waters.

5 She talked about a meeting, as did Kolar, on the campus of  
6 Evergreen. I mentioned this already. Why possibly would they  
7 want to create any kind of trail that could be traced, that  
8 they had a meeting where somebody could walk in on them, some  
9 faculty member would be there, some clerk would be there who  
10 checked out the room? Ridiculous. How did that happen? Why  
11 was Evergreen mentioned? Only because they knew that Briana  
12 Waters had a connection to Evergreen.

13 So to tie her into this, Lacey Phillabaum did what liars  
14 do. She made up a detail to make herself more credible.  
15 Think about the liars you have known in your lifetime. Think  
16 about -- look at the con men and women that you see covered on  
17 television. How do they fool people? They fool people by  
18 making up details that convince the mark, the victim, the  
19 person to be fooled. They convince that person by details, by  
20 making up details that are credible. I remember that event  
21 because it was my cousin's birthday, or I remember that event  
22 because I was watching this particular show on television, I  
23 will never forget it, it was my favorite singer, or whatever.

24 They come up with details because that's what makes them  
25 credible, and that's what Lacey Phillabaum does. At least she

1 did it until she busted herself, and then she couldn't  
2 remember anything.

3 She said that when she went over to Conger Avenue, where  
4 she said there was a clean room and that's where the  
5 incendiary devices were supposedly being made, Ocean was  
6 there. Ocean wasn't there. He didn't move there until July  
7 or August. His mother said so, and his ex-wife said so and  
8 Briana said so. There's no dispute. There's no evidence  
9 whatsoever that that house was finished any time other than  
10 July or August. That's when he moved in there.

11 When she was there, it was after -- as Briana Waters  
12 testified -- she was there after the house was ready and Ocean  
13 was there. That's why she did see Ocean there at that house,  
14 and that's the day Briana Waters saw her there and said, let's  
15 go for a walk. She went for a walk and she called her the  
16 names and told her the riot act about, "You shouldn't be here  
17 in my house, I don't ever want to see you, get out of here,  
18 you have had an affair with my boyfriend, you are  
19 disrespectful, you are anti-feminist, you are an unprincipled  
20 slut."

21 That's when she was there. That's why she could draw a  
22 sketch on the back of a photograph. It's a pretty sketchy  
23 sketch, but that's how she could draw anything about -- she  
24 was there. There's no question that she was at Conger Avenue,  
25 and no question that she knew there was a schoolyard with a

1 track because that's where Briana Waters said, "Let's go," and  
2 they went outside and they took a walk on that track; and  
3 that's where Briana Waters, in her anger -- which she had been  
4 carrying for several months -- said what she said to her.  
5 That's the conversation where Lacey says "Oh, yeah, now that  
6 you mention it." That's something you don't forget, and she  
7 pretended to forget it.

8 She made a big deal on direct examination, Lacey  
9 Philabaum did, that it was important to have a car that was  
10 not registered to any of the people involved in the incident.  
11 I think she called it a big issue, and it was the linchpin of  
12 the actions. That's just not so.

13 Without going through it, there were seven or eight events  
14 that took place, some of them arsons, where people used their  
15 own cars. In fact, it is said that they used Solondz' car  
16 that very night at the Jefferson Poplar Farm event. Dabee's  
17 car went to Susanville. Meyerhoff's car went to Susanville.  
18 Kolar's car went to, I think, a crop pull or another event.  
19 Kolar used her car at the Wray Gun Club.

20 So the claim that "a car that was not associated with any  
21 of the participants is essential" is not true. It's bogus.  
22 It's a lie. Forgive me for saying this again, but I feel I  
23 have to. In an American courtroom, when people are facing a  
24 conviction of a very serious crime that has very serious  
25 consequences, you really cannot rely -- you cannot permit



1 yourself to be pushed into relying on people who have lied to  
2 you, people you know that in your daily lives, if you looked  
3 across at them, they would -- you would say, I don't know that  
4 I can count on this person telling me the truth. That's how  
5 important this is.

6 It's important, firstly, because Briana Waters is  
7 completely innocent. Secondly, because you have a really deep  
8 responsibility to not permit that to happen, to not be the  
9 person sitting at home 12 years from now and it turns out that  
10 Kolar comes out of prison seven years from now and says, "I  
11 lied; Briana Waters had nothing to do with it. I had to lie;  
12 I was facing life imprisonment." You don't want to be that  
13 person. Those jurors that you see on television who have been  
14 in that position are devastated. Please don't let that  
15 happen. That's not what's supposed to happen in criminal  
16 cases in this country.

17 Lacey Phyllabaum is a person of bad character. She's an  
18 arsonist, a phony person who is trying to tell you that she  
19 wanted to scream from the mountaintops how she's reformed.  
20 Well, she waited a while. She learned on December 7th of 2005  
21 that her boyfriend had been arrested in Virginia, and it took  
22 her more than two months, two-and-a-half months, before she  
23 decided to go in and be remorseful, as she would have you  
24 believe. She didn't speak to them until February 21st of  
25 2006, two-and-a-half months later.

1       Why do you think it was that the prosecutors did not  
2 cross-examine Sarah Wald who testified that Lacey Phyllabaum  
3 had met with Briana Waters in early February of 2001? Because  
4 they just wanted to get her off the witness stand and not have  
5 you remember it. I am here to remind you of her testimony.  
6 She was clear. She was truthful. She was honest. She told  
7 you what it was about. Why is it important, again? Because  
8 of the drama that Lacey Phyllabaum created that this was the  
9 first meeting at Denny's in May, a week before the incident,  
10 and it will always stand out in her mind.

11       An interesting thing happened. They will tell you -- and  
12 they have told you that they wish -- I wish we had the Ralph's  
13 Thriftway document. I say to that: Give me a break. I  
14 suggest to you that they actually did have it. And the way we  
15 know they had it --

16       MR. BARTLETT: Your Honor, there's no foundation for  
17 this. I am objecting. This is just pure speculation.

18       MR. BLOOM: Excuse me, I am going to cite a portion  
19 of the transcript.

20       THE COURT: All right. Cite it.

21       MR. BLOOM: Lacey Phyllabaum testified -- I am going  
22 to get back to that. Mr. Fox is going to help me find the  
23 reference.

24       What happened is, minutes were taken and they resumed the  
25 numbering and there's two page 63s, so I have the wrong page.

1       On direct examination, the very first day that  
2 Ms. Phillabaum testified, question by Mr. Friedman -- line  
3 four at page 63:

4               "Question: I am sorry, before the crime, did you  
5 leave Olympia?

6               "Answer: At some point, we went to Seattle.

7               "Question: Do you recall when that was?

8               "Answer: In the evening.

9               "Question: The evening before the arson?

10              "Answer: Of the arson.

11              "Question: The evening that becomes the night or the  
12 morning of the arson?

13              "Answer: Yes."

14       Then there's a couple more questions, and then there's a  
15 question, just a lead in that's not relevant:

16              "Question: Can you tell us why?

17              "Answer: It looks just like a Tupperware that was  
18 used to hold the fuel."

19       And then Mr. Friedman asked the question:

20              "Question: Now, you said on Sunday night you drove  
21 up from Olympia to Seattle. Where did you go when you got to  
22 Seattle?"

23       Well, Mr. Friedman wanted to change it to "tonight" rather  
24 than "evening." Why? Because, I submit to you, that they --  
25 in their thoroughness, they knew very well that we had

1 proof -- or we might have proof -- that Briana Waters was in  
2 Olympia at Ralph's Thriftway at 12 minutes after 7:00.

3 So Mr. Friedman wanted to lead her into saying that the  
4 meeting was at night so that it could have been that she was  
5 in Olympia -- Ms. Waters -- and could have gotten there Sunday  
6 night rather than Sunday evening.

7 You have seen evidence of how thorough the FBI is in their  
8 work. It's to be admired. To suggest that they went to  
9 Ralph's Thriftway and didn't get the full package defies  
10 common sense. Based on your experience of what you've seen in  
11 the courtroom about how thorough they are, they got  
12 everything: They got telephone records, they got credit card  
13 records, they got hard disks, they have soft drives,  
14 magazines; they got everything.

15 We are talking about the debit card, the ATM card, of  
16 Briana Waters. To suggest that they did not have the  
17 Thriftway document defies common sense.

18 I see that I am going to have to move along a little more  
19 quickly here.

20 One of the points here seems to be, if you listen to  
21 Mr. Bartlett, it looks like Justin Solondz is on trial here.  
22 Justin Solondz' records, Justin Solondz' phone calls, Justin  
23 Solondz' maps, Justin Solondz' received phone calls. He made  
24 phone calls. He visited -- Justin Solondz is not on trial  
25 here. Briana Waters is on trial here, and I ask you to keep

1 that in mind.

2 Lacey Phillabaum talks about -- somewhere she said, "When  
3 we went from Olympia to Seattle, Justin had pre-positioned the  
4 devices and the gasoline." Well, when did that happen? The  
5 FBI didn't even ask her: Who did that? Were you with him?  
6 Did you have two cars? What happened? That's an important  
7 part of this event. How did they get from Olympia and how did  
8 they get -- what time did they go? Where did they stop?

9 Clearly, the importance of that is, if they left Olympia  
10 and they went right to the restaurant where they met Kolar,  
11 well, that would be one thing. That would make it a little  
12 earlier -- I am sorry, later -- that they could leave, but if  
13 they had to stop and they had to go from Olympia to the  
14 dumpster to leave the materials and look around, make sure  
15 nobody was watching, that would be another 15 minutes -- 40  
16 minutes, which means that they would have had to leave Olympia  
17 even earlier.

18 Any examination of when they would have to leave Olympia,  
19 in order to get to meet Kolar -- as she said 8:00, that was  
20 the figure that she gave, and Phillabaum said early evening --  
21 they would have had to leave Olympia at 5:00, maybe 5:30 at  
22 the latest, given what traffic could be and given what Mr. Fox  
23 was able to discover last night, was the actual traffic  
24 conditions for that Sunday, May 20th, in that part of Seattle.

25 Construction on I-5, the block parties, if you will, in

1 the neighborhood -- and they don't want to rush, and they  
2 can't speed because they can't get caught because they have  
3 gasoline in bags in the trunk of their car or the van,  
4 whichever it was. They also have -- if it was that car -- if  
5 it was the Corrina car, whoever was driving it was not Kara  
6 Larson, the wife of Corrina. It was an unauthorized driver,  
7 so they couldn't speed; they couldn't get a traffic ticket, so  
8 they had to go slowly.

9 They probably, as Mr. Fox suggested in his questions of  
10 the agent today, would have had to take a more roundabout way  
11 rather than go on I-5, so they really needed, rather than -- I  
12 think the testimony was it was 68 minutes last night that the  
13 agent drove -- they need two hours, maybe two-and-a-half hours  
14 to get to drop off the devices and to meet Kolar.

15 What does that mean? It means that if Ms. Waters,  
16 Ms. Briana Waters was in Olympia at 12 minutes after 7 -- and  
17 that seems to be undisputed -- that there's absolutely no way  
18 she could have been part of this, none.

19 The testimony of these two women is that they drove to the  
20 scene. Well, that's not exactly true. The testimony of  
21 Phillabaum, they drove to the scene, and then Ms. Waters was  
22 in the car and she was the lookout.

23 Well, the manual that was written by William Rodgers and  
24 Stan Meyerhoff, Phillabaum's fiancée, says very clearly that  
25 the lookout is supposed to get there ahead of time, either on

1 foot or on bicycle. That's in evidence. I think it's called  
2 How to Set Fires. An unpleasant book to read, but it's a  
3 manual. It tells what the people who in fact were involved in  
4 these arsons -- not Ms. Waters, but Ms. Phillabaum and Ms.  
5 Kolar -- what they were doing, how they did it, and that's how  
6 they did it.

7 One of the things that is in the manual that they are  
8 supposed to do is make sure the lookout is there ahead of time  
9 and go by foot or bicycle.

10 Now, Phillabaum testified that at the scene, right there  
11 at the scene, she crouched down with Kolar, and she saw a  
12 bicycle and she said to Jen, as she called her -- she talked  
13 about the bike and does that mean somebody's here.

14 She actually said at the scene of the fire, "I had  
15 conversations with Jennifer Kolar," which makes it all the  
16 more ridiculous that Kolar is claiming that she doesn't  
17 remember Phillabaum being there. They spoke to each other in  
18 the hush of the morning, right at the edge of the fire, or  
19 where the fire is about to be. They spoke to each other.

20 Phillabaum also said that Avalon looked -- he was in the  
21 office and looked for documents. She first said there weren't  
22 any, and then she changed her mind -- there were some. She  
23 also said -- and this is of great importance -- she told them  
24 the very first day, February 21st, when she spoke to them in  
25 their offices; she said that Justin Solondz and Briana Waters

1 were the lookouts, two people. That was her memory. That's  
2 what she believed had been told to the FBI, because she was  
3 telling them what she believed they already knew, so she gave  
4 them that information. But sometime between then and the time  
5 you saw her on the witness stand, that changed to Briana  
6 Waters alone.

7       What does that mean? Here you do an arson -- she says  
8 it's her only arson. She's a smart person. You would think  
9 that she would have a good memory of it. What does she do?  
10 She says two people, one of whom absolutely was not there --  
11 Briana Waters -- were the lookouts. Then she changes. What  
12 does that tell you? It tells you that she's not a person  
13 who's telling the truth, or at least it's a person as to whom  
14 you have to have a doubt as to whether she's telling the  
15 truth. You've seen who she is.

16       We talked about Corrina. I want to keep it brief about  
17 Corrina.

18       Briana Waters, after she was approached by Agent Halla in  
19 February two years ago, contacted friends and family and said:  
20 "I look like I am in some trouble." By the way, when Agent  
21 Halla came there to say to her, "We're investigating whether  
22 or not you were involved in an arson at the University of  
23 Washington in May of '01," Briana Waters testified that she  
24 denied that. There's been no testimony from anyone to dispute  
25 that.



1       When Briana Waters was accused, not exactly -- asked to  
2 cooperate by Agent Halla, one of the first things she did is  
3 she got in touch with friends and family and said, "The FBI  
4 may come around," and she said specifically to Corrina, her  
5 cousin, "I am innocent. Tell them the truth."

6       Well, they did come around eventually, and he didn't tell  
7 them the truth. He committed the federal crime of lying to a  
8 federal officer. He said he doesn't even know a Briana  
9 Waters. She didn't ask him to do that. She certainly didn't  
10 want him to do that; and he got himself in a big jam; and they  
11 wound up eventually putting him in front of a Grand Jury and  
12 he testified falsely; and now they really had him. That's  
13 what they call a perjury trap, and that's what happened with  
14 Rob Corrina and his wife Kara Larson.

15       Mr. Friedman, the power of the Department of Justice,  
16 decided to put them in the Grand Jury, to lock them in and put  
17 them in a place where they really were going to have to  
18 cooperate, and that's exactly what happened. They scared the  
19 pants off Corrina, and they scared the pants off his wife.  
20 Then he comes and tells stories, and it turns out that the  
21 story he tells, that the car was rented for Briana Waters at  
22 her request, and the timing that he gives which I went through  
23 earlier, exonerates her.

24       Remember -- I am going to say it again -- that on Monday,  
25 the 21st, he said that he was waiting for her to bring back

1 the car and he was waiting at home. It could not be. He was  
2 not at home. He was at work. So the day he was waiting for  
3 her to bring back the car, even if you believe his story, even  
4 if she did use the car, which she didn't, had to be Sunday.  
5 It had to be Sunday.

6 So the whole story of her taking the car Sunday evening,  
7 telling the story about going to the hospital, was all made  
8 up. Heaven knows why he made up that detail, but he was  
9 completely, absolutely wrong. As I said before, if there were  
10 any proof at all that Rob Corrina was not at work that Monday,  
11 you would have seen that witness. He was at work that Monday.  
12 His story could not have been true.

13 If she did use that car at all, which she does not  
14 remember -- understand, when I say that she doesn't remember,  
15 I will repeat something that's really critical. She, unlike  
16 the arsonists, does not have a reference point for that  
17 weekend or that month. The only reference she has is April,  
18 when she finished producing her video, and a couple of dates  
19 when she remembers showing it.

20 In fact, on Corrina's calendar, it was shown on May  
21 31st -- Capitol Theater in Olympia -- but she can't remember  
22 back four-and-a-half years to events that were of no  
23 consequence, of no meaning. I suppose it's possible to use  
24 the car for an errand or not. She doesn't remember that. But  
25 she certainly didn't take the car, and she certainly didn't

1 commit an arson.

2 Now, the mileage that was put on the car -- I think the  
3 mileage adds up to about -- between Olympia and Seattle, round  
4 trip adds up to about 140 hours, a little less. Well, there's  
5 237 miles on that. How do they explain that?

6 Well, they say Corrina was penniless. He wasn't  
7 penniless. Not at all. He had a job. He was working. I  
8 don't know where they came up that he was penniless. Further,  
9 about being given money by Briana, well, he now says that he  
10 was given \$200 at that time by Briana.

11 There's no record of it being given to him by Briana, but  
12 he did say when he spoke to them at first, that just before  
13 Briana left to go to the Bay area, she gave him \$100 and she  
14 gave it to him -- and she remembers giving to him about \$100,  
15 not for a car, but for food and mostly for telephone.

16 So it got changed. No matter how you slice it, they are  
17 relying on his testimony being truthful. He first told them  
18 it was \$100 -- it was just before she moved to California, and  
19 it didn't have anything to do with the things they say that it  
20 had to do with. That was his first statement. They want to  
21 take people's first statements, and they say don't pay any  
22 attention to that -- just youthful folly.

23 If that rental car had been used for that incident, for  
24 that arson -- I have said this, and I want to say it again --  
25 the FBI lab person would be up there telling you, "I looked at

1 the rear quarter panel and there was evidence of damage."

2 Remember, Lacey Philabaum used the word "damage" and she  
3 used the word "dent." She used the word "dent." I am not  
4 just talking about paint scraping. When she comes and  
5 testifies here, "We were only going five miles an hour,"  
6 that's just not true. That can't be true. First of all,  
7 because she said it seemed "huge." That's the word she used,  
8 "huge."

9 Test the car. Have the FBI get the car. Ask the owner in  
10 Wisconsin, is it okay? We'll give you a loner, and we'll have  
11 your car back, painted, good as new; let us test the car. If  
12 they said no, they get a court order. They could have tested  
13 it. They didn't test it. They could have tested it because  
14 they knew it's not the car.

15 How do they know? In part, because Rob Corrina and his  
16 wife used the car themselves that weekend. She had us -- she  
17 uses -- apparently she wrote two checks for \$1.25 twice, once  
18 on the 19th of May and once on the 22nd of May, maybe the  
19 21st; somehow she paid \$1.25 in checks to use public  
20 transportation.

21 So they used the car that weekend. That's the whole  
22 point. They used the car. Now, he had said when he first  
23 spoke to them, the reason they got the car was because their  
24 bikes were in the shop. That's his memory. Now, it may be  
25 that the notation on the calendar later on says "bike to

1 shop." Maybe it just wasn't working on the weekend of the  
2 20th and 21st, and maybe he did finally take it in after that,  
3 but he said to them that it was about -- the whole purpose of  
4 the rental was because our bikes were not operable.

5 Indeed, they did use the car that weekend. They used the  
6 car Saturday and Sunday. There are at least three charges --  
7 actually, four charges for restaurants and for supermarkets in  
8 those two days. They used the car.

9 Why do you think, when they finalized the 302, the FBI  
10 report, and as they say in February of '06, Jennifer Kolar had  
11 told them -- and we saw it in Agent Halla's notes or Agent  
12 Torres' -- I think it was Agent Halla's notes -- it was a car  
13 or van. Why do you think they left out van when they  
14 finalized and serialized the document?

15 Wouldn't you want to make it accurate? If she said car or  
16 van, that's what you would want to write, unless you have a  
17 reason for not writing it. They wanted the car. They wanted  
18 it to be a car because they wanted this to be the car, because  
19 by that time, as of January 5th, they were now focussing on  
20 Briana Waters. That's what was happening.

21 So now -- that's why it's safe to say, because Agent Halla  
22 seems like a pretty nice guy and his testimony was quite  
23 credible -- he said, by the way, she named -- she, Kolar,  
24 identified five people. That was his testimony. He didn't  
25 say "vague." He said she identified five people.

1 But when the deal went down, he decided there was going to  
2 be a little bit of fudging of the FBI reports. You will see  
3 it. Not because I say it. You take a look at it.  
4 Particularly that February 4th document, where it got changed  
5 from Lacey and Briana not together, to Lacey and Briana not  
6 good friends. There's no other explanation for that.

7 What do we know from this so far? We know that Briana  
8 Waters was in Olympia at 12 minutes after 7:00. We know that  
9 given the traffic and the potential traffic, Lacey Philabaum  
10 and the people who apparently committed the arson with her  
11 would have had to leave Olympia by 5:00 or 5:30. That's what  
12 we know. We know that Meyerhoff says not involved. We know  
13 Kolar has lied to you about who was involved in the incident;  
14 lied on the witness stand.

15 When we offered the Ralph's Thriftway document, there were  
16 no questions. It just went in. They hoped you would forget  
17 it, but please don't forget it. It proves conclusively that  
18 Briana Waters was in Olympia at 12 minutes after 7:00

19 Ms. Troxel from Randle testified -- one of the first  
20 character witnesses -- and she testified as to what happened.  
21 She told you the story of the Watch Mountain campaign as a  
22 Randle resident, about how meaningful it was to her, about how  
23 meaningful it was to associate with Briana Waters and her  
24 friends. Then she was cross-examined, and I actually don't  
25 remember right now what the subject matter was, about what she

1 was cross-examined about, but Ms. Troxel said to Mr. Bartlett:  
2 "You are grasping at straws, Mr. Bartlett." So much of the  
3 evidence that's put before you is grasping at straws.

4 What moment is it that Briana Waters, in one particular  
5 month, paid the rent for Justin Solondz? What is that about?  
6 That has absolutely no meaning. What is it they wanted you to  
7 believe? Why did they put that into evidence -- that she is  
8 supporting him? I don't get it. Grasping at straws.

9 Tiffany Tudder. What does that mean, that a college  
10 student said, "I support it, if nobody gets hurt." What does  
11 it mean that Di bee called her -- and obviously there was no  
12 answer; it's a one-minute minimum -- sometime before a  
13 Susanville arson of which she's not accused and sometime after  
14 the Susanville arson? What does that mean? That's just to  
15 taint you. That's just to trick you into thinking that she  
16 was involved in something that there is no accusation she was  
17 involved in.

18 They tried to impeach her by using a pleading that Mr. Fox  
19 and I had prepared which tries to minimize the impact of the  
20 crime. They said, "This is you, you wrote this, you are  
21 responsible for this." That's nonsense. That's a smoke  
22 screen. That's grasping at straws.

23 They actually went so far as to suggest that she  
24 orchestrated who comes to court to watch. A class came to  
25 court and when they left in the afternoon, or the following

1 day -- six people came to court. What does that possibly  
2 mean? Why would they introduce that? Why would they  
3 cross-examine that? What is that about?

4 The materials -- this is very important. They want you to  
5 believe that it was Briana Waters that sent those. Let's call  
6 them the inflammatory pamphlets to Jennifer Kolar. There's no  
7 fingerprints of Briana Waters on anything but the folder. I  
8 think it's clear that she sent or gave Jennifer Kolar some  
9 things to read. This is the same Jennifer Kolar who has  
10 decided to name her, so it was she who gave them the folder  
11 with some things in it. How can they possibly rely upon the  
12 proposition that those are the documents that were originally  
13 in the folder? No fingerprints of Ms. Waters on any of those  
14 documents.

15 Justin Solondz, yes. Briana Waters, no. Justin Solondz  
16 is not my client. He's not on trial. Briana Waters is here.  
17 She's innocent. She's pleaded not guilty. She has testified  
18 before you. She didn't have to, but she wanted you to see and  
19 hear who she is and what she had to say. We have produced  
20 about a dozen people, wonderful people who have come here from  
21 afar to testify to her character.

22 They searched Rodgers' place in Arizona. They found one  
23 document, a reference -- a footnote that had a reference to  
24 the Watch video. That's all they found in connection with  
25 Briana Waters. They had you believe -- they showed you a



1 document where it revealed approximately 50 phone calls from  
2 Mr. Rodgers to the places where Briana was staying, but it  
3 covered the period of the entire year of 2001. It comes to  
4 about one phone call a week.

5 The suggestion is he's calling you all the time. Well  
6 first of all, that's not true. It was about once a week. But  
7 then they do this, and they say there were no phone calls in  
8 that period of May 19, 20, 21. Well, if there had been phone  
9 calls, they would have said: Ah-hah, there were phone calls.  
10 Now they are saying, ah-hah, there were no phone calls. What  
11 is it? What does it prove?

12 In fact there are no phone calls -- it proves that  
13 Mr. Rodgers apparently was busy that weekend and he may very  
14 well have been busy committing an arson with Lacey Philabaum  
15 and Jennifer Kolar, but he was not committing an arson with  
16 Briana Waters because she doesn't commit arson. She didn't.

17 She didn't do crop pulls. She didn't do girdling.  
18 There's been no proof whatsoever, not a single word that she  
19 did anything other than what she told you she did.

20 They went to her website and cross-examined her website.  
21 Talk about grasping for straws. Aren't you making money off  
22 of this case? How ridiculous.

23 She told you, and she didn't have to tell you -- you can  
24 imagine what her life has been like since the day Agent Halla  
25 showed up. Agent Halla was nice, polite and professional.

1 But to understand that you are accused of a serious crime that  
2 is going to put you -- I guess I can say it because it's out  
3 there -- in prison for a minimum of 35 years, what do you  
4 think her life has been like? Do you think she's making money  
5 off her website? How ridiculous. Give us a break.

6 The map at Justin's. There was a lot of maps at Justin's.  
7 They pick out that map and they say, this is the map that's  
8 going to prove what? Something about Ms. Waters? Of course  
9 not. That's called grasping at straws. They see some  
10 literature at Justin's, and they position the magazines in  
11 such a way so that they can take the picture. They put the  
12 anarchy magazine right out in front.

13 This literature that -- Mr. Bartlett himself took a yellow  
14 highlighter, and he looked at the literature that Jennifer  
15 Kolar had given to them, saying this came from Briana Waters;  
16 and he took a yellow highlighter and he picked out the stuff  
17 that was most inflammatory, where he would hope that you would  
18 say, oh, this Briana Waters, she wants to burn down the Statue  
19 of Liberty; she wants to burn down Disneyland.

20 How dare he attribute that. First of all, the source of  
21 it was from a woman who's a liar, Jennifer Kolar, and how dare  
22 he -- no question that he's trying to say to you that this is  
23 what Briana Waters thinks about it. That's what he's trying  
24 to say to you. That's false. That's fraudulent. That's  
25 dishonest. You can't let that happen. He thinks you will be

1   fooled.  He thinks you aren't sophisticated.

2       If he shows you this stuff, they will believe it, or maybe  
3   some of them will believe it.  It's not Briana Waters.  You  
4   heard who she is.  You saw who she is.  She subjected herself  
5   to cross-examination.  I wish I can say more.  My time is  
6   limited.

7       Could I get another 15 minutes and then that will be it?  
8   May I make that request?

9           THE COURT:  Go ahead, Mr. Bloom.

10          MR. BLOOM:  Thank you.

11          THE COURT:  Go ahead, but please close it down.

12          Mr. BLOOM:  I will eliminate some stuff.

13          THE COURT:  Please.

14          MR. BLOOM:  Thank you.  I appreciate it.

15       What is it that Ms. Phillabaum said about a rental car?  
16   She didn't say it was a cousin.  She said it was an aunt, an  
17   older woman.  Where do you think she got that?

18       I suggest you are all familiar with the game, party game  
19   called "telephone," where a message is passed through a lot of  
20   people.  By the time she got the information of what she  
21   thought the FBI knew, she decided what she was going to say to  
22   them:  that it was an aunt.  That's what she had heard.  That's  
23   what she had made up.

24       She was getting information, and legitimately so, from her  
25   father who admittedly -- the FBI has told you that her father

1 was called, and surely he was given some information about  
2 what it was about.

3 When Lacey Philabaum testified, she was a person who was  
4 very much attentive to detail. When she looked at the  
5 document we gave her that had to do with the New York Times  
6 reporter, Mr. Carr, she said -- she only looked at it for a  
7 little while, and she said the e-mail address is wrong here.  
8 She's no fool. She understands it.

9 She had the information wrong. The reason she had it  
10 wrong is because she made it up. That's what happens when two  
11 people tell a story that's not true. That's how they get  
12 caught. They make up details, and Mr. Bartlett has  
13 acknowledged to you there are some discrepancies. One thing  
14 that makes discrepancies -- and I would have to agree that  
15 people see things and remember things in different ways, but  
16 the discrepancies here don't fit that description. The  
17 discrepancies are major.

18 What about the Rodgers telephone? Ms. Waters was asked by  
19 Mr. Rodgers to buy a cell phone for him. She did, because she  
20 did him a favor, and she explained who he was, what the nature  
21 of their relationship was: that he was a depressed person and  
22 she agreed, as a friend, to buy him a telephone. Whose name  
23 did she buy it in? Not some phony name. Not Reba. Not  
24 Diver. Her own name. She wrote her own checks, with her name  
25 printed on it. That's not a deception. That's not some

1 dishonest act. That has nothing to do with arson. It has to  
2 do with a friendship. Another grasping at straws.

3 Lacey Philabaum wrote an e-mail to a friend of hers, and  
4 here's what she said. She said, "The Feds overcharge, they  
5 force plea deals; taking a case to trial is not a right, but a  
6 very risky proposition." That's what she wrote to a friend of  
7 hers. That's what we've seen here, and we certainly see it's  
8 a risky proposition.

9 When you see it, look at the energy they have put into  
10 trying to put this woman in prison for 35 years. What can  
11 that possibly be about?

12 What is that about? Yes, they overcharge. They force  
13 plea deals. They forced a plea deal with her. They forced a  
14 plea deal with Jennifer Kolar. Lacey Philabaum knows it, and  
15 that's what she told her friend, and that's what she has in  
16 effect told you. Please keep that in mind.

17 That's what they do. Look at their power. Look at what  
18 they did with Rob Corrina and Kara Larson. They put them in  
19 the Grand Jury. In another setting, they would simply be  
20 called bullies.

21 Briana Waters supposedly wanted the car, asked Corrina to  
22 rent a car so that she could use it with her associates in an  
23 arson. Well, Corrina told you, the day that she was supposed  
24 to show up, she didn't even show up. Does that seem  
25 consistent with wanting to use the car, to secure the car, to

1 get the car; secure it in advance so you can be sure you have  
2 a car? She doesn't even show up. Obviously, she had nothing  
3 to do with the car.

4 If indeed the car was supposed to be used for an arson,  
5 you would show up a day early, rather than a day late. How  
6 can they possibly say that this car -- given what Mr. Corrina  
7 said, no, he didn't rent the car at the request of Waters. He  
8 didn't. That's what happened.

9 Then they got him to change his mind, and then they had  
10 him in the perjury trap, and that's why he was here, looking  
11 very unhappy and being very unhappy.

12 I am sorry to take time here, but I am trying to go past  
13 some items here that I think I can skip.

14 I want to talk about Lacey Philabaum again. She came out  
15 with the crude language the afternoon of her  
16 cross-examination. Not only was it crude, and not only was it  
17 inappropriate, but it's the kind of thing -- the act that she  
18 denied -- just the way it came out, it had what you would call  
19 the ring of truth, that when she said that, you know that's  
20 exactly what did happen.

21 Remember the testimony of Mr. Wake, the very brief  
22 testimony of Justin's landlord? He testified about the  
23 structure of the cabin, that there was a bed, that there were  
24 places to sit other than the bed. Well, why would she sit on  
25 the bed? Of course she sat on the bed because of the obvious.

1 It was a plan. Why did she go to the cabin at all with  
2 Justin? Obviously, it's not just that she had relations with  
3 him. It's just that she wasn't forthcoming to tell the truth.

4 When she was first asked, "Do you have any ill will  
5 towards Briana Waters?" "Absolutely not; I have sympathy  
6 towards everybody." Then she repeated no, no, no. Then she  
7 got snagged, she got caught, and then she got further caught  
8 when it was revealed that she was in his bus with him and she  
9 realized she better come up with something, and then she  
10 started to remember.

11 Lacey has admitted that she was a drug abuser. She's  
12 admitted to -- I think she called it a marijuana addiction.  
13 She's admitted that she used the drug ecstasy. She's followed  
14 this case. She has read the pleadings in this case. She's  
15 very smart. She has been able to adjust her testimony, adjust  
16 her story based on what she reads about this case.

17 That is how -- that is who she is. She came in trying to  
18 look pathetic and sad and beaten down and remorseful, but she  
19 eventually -- toward the afternoon, she answered a question  
20 with words that I didn't understand, that were beyond my  
21 comprehension, beyond my vocabulary. She's an extremely smart  
22 person who was playing dumb.

23 Eventually, she gave up the act. I asked her about Stan  
24 Meyerhoff, and Stan Meyerhoff, just a few weeks after she,  
25 Lacey, decided to name Briana Waters. That was the time that

1 Meyerhoff looked at Briana's picture and said "not involved,"  
2 and I asked her about that, and her answer was: "Stan has a  
3 different memory of what happened than I do."

4 Well, Stan already had his deal. He had made his deal on  
5 December 7th, or he began to make his deal on December 7th,  
6 the day he got arrested. She was now making a deal, and she  
7 had to remember it differently than Mr. Meyerhoff because she  
8 couldn't help herself unless she came up with a name that she  
9 thought would please the FBI. That's what happened here.

10 Remember, the key concept here is that she gave them  
11 names, information that she thought they already had. She  
12 finally came around to acknowledge that.

13 THE COURT: Final words, Mr. Bloom.

14 MR. BLOOM: I am sorry.

15 THE COURT: Final words.

16 MR. BLOOM: Thank you.

17 You are the conscience of the community. I ask each of  
18 you to bring your conscience to these deliberations. This is  
19 about a very important matter. It couldn't be more important  
20 to Briana Waters and the people around her, and it can't be --  
21 Let me put it this way. If you find that a person who is  
22 innocent is not guilty, everybody wins. Everybody in this  
23 room wins. Everybody in this country wins. If you do the  
24 right thing, if you follow the principles of not convicting  
25 anybody unless there's credible proof beyond a reasonable



1 doubt, you will have served everybody, and it will be an event  
2 you will never forget, and you have done the right thing.

3 I ask you to really bring your conscience to this, and  
4 don't be overwhelmed by the nature of the setting, by the  
5 nature of the accusations, by the federal government. It  
6 isn't right. It isn't fair. It isn't just to convict this  
7 woman who did not commit this crime.

8 Thank you.

9 THE COURT: Mr. Friedman, you are giving rebuttal?

10 MR. FRIEDMAN: In light of the hour, could we restart  
11 in the morning at 9:00 and do that?

12 THE COURT: Let me ask the jury. Are you receptive  
13 to getting the rest of this case? Tell me how long you are  
14 talking about here.

15 MR. FRIEDMAN: Probably half an hour.

16 THE COURT: Well, first of all, let me give you a  
17 quick break and have you back here. Leave your books on the  
18 chair and don't discuss the case, and we'll get to this.

19 (Jury not present.)

20 THE COURT: You may be seated.

21 What I want to do is get this case completed today so that  
22 this jury can go to work in the morning. So I would ask you  
23 to think about what you need to rebut and do that. Let's take  
24 a 10 minute break and have them back in here.

25 THE CLERK: All rise. Court is in recess.

1 (Afternoon recess.)

2 (Jury not present.)

3 MR. BLOOM: Thank you for the extra time.

4 THE COURT: Are we ready? Bring them in.

5 (Jury present.)

6 THE COURT: You may be seated.

7 Mr. Friedman.

8 MR. FRIEDMAN: Thank you, Your Honor.

9 Good afternoon, Ladies and Gentlemen. There's a list of  
10 names on the screen in front of you: Jennifer Kolar, Lacey  
11 Philabaum, Robert Corrina, Ted Halla, Tony Torres.

12 To believe what Mr. Bloom wants you to believe, to accept  
13 what he wants you to accept, to conclude that the Defendant is  
14 innocent of the charges in this case, you have to believe that  
15 all of those people are lying, that they all came in and lied  
16 to you. Not one, not two, not three or four -- all five of  
17 them. You have to believe that they worked together; that  
18 they conspired together to frame this Defendant.

19 Jennifer Kolar. Jennifer Kolar, who told you that she  
20 really liked the Defendant. According to the Defendant,  
21 Jennifer Kolar, who had a strong connection with the  
22 Defendant, and yet now when she needs to pick someone to  
23 frame, she picks the Defendant.

24 Lacey Philabaum. Lacey Philabaum, who testified so  
25 compellingly for nearly a day on cross-examination, who told

1 you that she felt a great deal of compassion for everyone  
2 involved in this process, including the Defendant, and yet  
3 she's lying to frame the Defendant.

4 Robert Corrina, the defendant's cousin. Mr. Corrina told  
5 you that the first time the FBI came by, he pretended not to  
6 recognize a photo of her. He did that in an effort to protect  
7 her. He said he didn't think. That's just what you do to try  
8 to protect your family. And now Mr. Corrina is lying. In the  
9 Defendant's words, he's making things up to frame her.

10 Agents Halla and Torres. They have never heard of Briana  
11 Waters. They had never heard that name until January 5th when  
12 Mr. Martin called to report that name to the Government. This  
13 isn't someone they were looking to convict. This isn't a  
14 long-time target. And yet, you have to believe that they both  
15 also joined in the conspiracy to frame Briana Waters.

16 There's, of course, been no evidence of such a conspiracy.  
17 It makes no sense. It's contrary to all the evidence in the  
18 case. It's contrary to all the evidence which proves beyond  
19 any doubt that this Defendant did exactly what she's charged  
20 with, and that she's guilty of the crimes with which she's  
21 charged.

22 You've already -- we have gone through the evidence a  
23 couple times, but let me ask you to take a look at it in a  
24 different way, through a different lens, to look  
25 chronologically at what happened in this case, the

1 investigation as it went forward. If you do that, you will  
2 see that there's no way in which these witnesses could provide  
3 this information.

4 Each witness, as they came in -- no way unless it were  
5 true -- each witness as they came in provided information that  
6 was subsequently corroborated by physical evidence, physical  
7 evidence they could not know existed if they were not telling  
8 the truth. This investigation started at the time of the UW  
9 arson in May of 2001 -- or the investigation of that fire, and  
10 for four-and-a-half years, there was almost no progress,  
11 almost no break.

12 Then in December of 2005, Jennifer Kolar came in for a  
13 meeting with the Government, and she admitted that she had  
14 participated in that arson and she provided some information  
15 about the arson.

16 You've heard a great deal about that meeting and the  
17 agent's notes. You've seen the agent's notes. You've heard  
18 about the report. The central thing -- and there's no dispute  
19 on this -- she didn't identify Briana Waters in that first  
20 meeting, but two weeks later her lawyer called and said that  
21 she had recalled the identity of one more of the people  
22 involved in the arson, Briana Waters.

23 That information has been corroborated by other physical  
24 evidence developed since that time. Ms. Kolar's computer  
25 contains old files that corroborate what she had said.

1 There's an address book that has entries for Avalon, for other  
2 people. There's a calendar that shows a meeting at the  
3 library in Olympia, a meeting that the Defendant was  
4 instrumental in arranging.

5 Most tellingly, there's Exhibit 614, the folder of  
6 documents that the Defendant gave to Jennifer Kolar back in  
7 2001; the articles that she wanted her to read. When  
8 Ms. Kolar came in, she didn't recall that she'd been given  
9 that document. It had been stored away for four years in a  
10 tub of documents. She turned it over to her lawyer, and her  
11 lawyer in time turned it over to Agent Halla, and he looked  
12 through and he found the folder with the note signed by her,  
13 and the documents, and he sent those to the lab.

14 The folder came back -- the report on the folder came back  
15 saying there was a fingerprint on there, and it was the  
16 Defendant's, and the articles inside had the fingerprints of  
17 her boyfriend, Justin Solondz. Ms. Kolar didn't -- when she  
18 came in, in December, when she passed Briana Waters' name on  
19 to the Government, she didn't know that that folder would be  
20 found in the tub. She didn't know that it would have the  
21 Defendant's fingerprints.

22 She didn't know what her old computer files would say,  
23 files she hadn't thought of for years. All of that evidence  
24 is evidence subsequently found that corroborates what Jennifer  
25 Kolar told the Government about Briana Waters' participation.

1       Moving on to mid February, by mid February, Agent Halla  
2 had concluded that Lacey Philabaum was involved. Agent Halla  
3 contacted Lacey Philabaum, and Lacey Philabaum came in  
4 within three days and she also provided information. She  
5 provided information implicating the Defendant in this crime.

6       There's been a lot of suggestions thrown about, a lot of  
7 aspersions cast by Mr. Bloom, that somehow Lacey Philabaum  
8 and Jennifer Kolar are working together, that somehow the  
9 Government leaked the information to Jennifer Kolar, one  
10 theory after another, all of them inconsistent, all of them  
11 unsupported by any evidence in this case.

12       There's no connection in the phone records between  
13 Jennifer Kolar and Lacey Philabaum. They both told you they  
14 were out of touch with each other. There's no suggestion, no  
15 credible suggestion, that the Government actually provided  
16 information to Lacey Philabaum. Agent Halla testified that  
17 no such information was provided, and Lacey Philabaum  
18 testified to that effect herself. She was asked a couple of  
19 questions.

20       She was asked: "Question: Did you receive any  
21 information from the Government about what happened at the  
22 University of Washington arson?

23               "Answer: No.

24               "Question: Do you have any reason to believe that  
25 your attorney received any information from the Government

1 about what happened at the University of Washington arson?

2 "Answer: No."

3 So even today's newest theory that somehow the  
4 information was given to her father, her father is her  
5 attorney and her father does what any father would do and  
6 leaked the information to her; there's nothing to support  
7 that. In fact, the clear testimony given in this case, the  
8 testimony of Agent Halla and of Lacey Phyllabaum, is that that  
9 didn't happen.

10 Lacey Phyllabaum's testimony, like Jennifer Kolar's --  
11 Lacey Phyllabaum's account is corroborated by physical  
12 evidence, physical evidence that she could not have known  
13 would exist to corroborate her account if she were not telling  
14 the truth.

15 At the time that Lacey Phyllabaum came in, the Government  
16 didn't know where the Defendant was living at the time of the  
17 arson. Yet Lacey Phyllabaum provided the sketch -- you've  
18 seen the sketch, Exhibit 1013C, I believe -- of the house in  
19 which the Defendant was living with a separate outbuilding in  
20 the garage in back. In time, when Agent Halla found it, that  
21 turned out to be exactly where the Defendant was living at  
22 this time. That's the place where the bombs were built for  
23 the University of Washington attack.

24 Even more important, Lacey Phyllabaum said that the  
25 Defendant was the person who had arranged for a rental car.

1 She recalled that the Defendant was having a relative, and she  
2 referred to her as an aunt, and Lacey Phillabaum understood  
3 that that term was used a little loosely, not necessarily an  
4 aunt, but that she had this aunt get a rental car to be used  
5 in the University of Washington arson.

6 If that weren't true, Lacey Phillabaum couldn't have had  
7 any knowledge of it. That was the first the Government had  
8 heard of it. The Government didn't have any records of a car  
9 like that. The Government couldn't leak that to Lacey  
10 Phillabaum, and Jennifer Kolar didn't know what the source of  
11 the car was, so that's clearly not coming from her either.  
12 It's not a conspiracy between the two of them.

13 Agent Halla took that piece of information, he spent most  
14 of a year trying to figure out who it was that the Defendant  
15 knew, who her relatives were.

16 MR. BLOOM: I am sorry, but there's some statements  
17 here, materials that are not in evidence, and I would object  
18 to that.

19 THE COURT: All right.

20 MR. FRIEDMAN: Thank you, Your Honor.

21 He spent most of a year trying to figure out who might  
22 have rented this car and eventually, through hard work, he  
23 found the car rental record: a rental by Kara Larson, the wife  
24 of Robert Corrina, the Defendant's cousin, for exactly the  
25 weekend when this arson was committed.



1        If Lacey Phillabaum was not telling the truth about what  
2 happened, there would be no way that she could know about that  
3 rental, and there would be no way that that rental would even  
4 have happened.

5        The fact that after looking diligently, Agent Halla was  
6 able to come up with a record that corroborated exactly what  
7 Lacey Phillabaum told him is the proof that what you have  
8 heard is true: The Defendant was a participant in this arson,  
9 that she was the person who rented the car.

10       Moving on to Mr. Corrina, he also provided information  
11 that subsequently corroborated, by physical evidence, about  
12 which he did not know at the time.

13       When Mr. Corrina came in and was interviewed and indicated  
14 that the Defendant had asked him to rent a car and he had  
15 rented a car, and he explained how she had come on the day  
16 before it was due back, the Sunday, taken the car with the  
17 story about needing to go to the hospital and not reappearing  
18 until the next day, he had just been presented with those  
19 records.

20       He did not have his old bank records. He didn't know that  
21 those records, which the Government obtained subsequently,  
22 would show the payment for that -- the \$200 payment -- that  
23 they would confirm his account -- that this was not a rental  
24 for him, this was a rental for the Defendant, a rental that he  
25 did at her request so that she would have a car to use for

1 this arson.

2 Mr. Corrina also had not looked back at his calendar and  
3 subsequently provided his calendar, and that has a note on it,  
4 "call Budget," a week after the rental. The only explanation  
5 for that is another fact that Mr. Corrina knew nothing about.  
6 Mr. Corrina didn't know that there had possibly been a scrape  
7 or minor accident to the car. He's not in -- he has no  
8 contact with Jennifer Kolar or Lacey Philabaum. They move in  
9 completely separate worlds.

10 There's no suggestion that Agent Halla provided any  
11 information like that to him. Yet, he provides a calendar  
12 that says "call Budget." As he looks at that, he recalls that  
13 that was because Briana Waters, when she brought the car back,  
14 expressed some concern about damage, and that he was calling  
15 Budget to find out if there was in fact any damage to the car  
16 that had resulted in an extra charge.

17 So the calendar, the bank records, are physical evidence  
18 that Mr. Corrina could not have known about; they are details  
19 that he provides that match with what the other witnesses have  
20 said, that he could not provide if he were not telling the  
21 truth.

22 When you look at all of the evidence, it all fits  
23 together. Each of the witnesses provide additional  
24 information that they could not provide if they were not  
25 telling the truth. It's information that could not come from

1 the Government because the Government didn't know it at the  
2 time of the interview. It's information that could not come  
3 from other defendants -- other witnesses who had already come  
4 in and agreed to cooperate because those witnesses did not  
5 know that information.

6 So the physical evidence corroborates what Jennifer Kolar  
7 says. It corroborates what Lacey Philabaum says. It  
8 corroborates what Robert Corrina says, and it corroborates it  
9 in a way that proves that what they are telling you is what  
10 happened.

11 I want to address a few of the things that Mr. Bloom said  
12 when he spoke to you earlier. He referred to Stan Meyerhoff  
13 again and the episode on March 17th of 2006 where he's shown a  
14 picture of the Defendant and says "familiar," "not involved."

15 As you already heard, before that, back in January,  
16 Mr. Meyerhoff had described the Susanville arson, and he had  
17 said that one of the participants was a blonde violinist from  
18 the Bay area. He had described the Defendant before he was  
19 ever shown a picture. I submit to you that Mr. Meyerhoff is  
20 not here. He's not been called as a witness, so you may want  
21 to put the evidence about what he said aside. But if you want  
22 to consider it, it's evidence that suggests that the Defendant  
23 was involved in this conspiracy, not evidence that exculpates  
24 the Defendant.

25 Mr. Bloom also questioned why the Government had not

1 called Stan Meyerhoff. The Government called the witnesses  
2 with the relevant information in this case. Five people  
3 participated in the University of Washington arson. William  
4 Rodgers is dead. He committed suicide shortly after arrested.  
5 The Defendant's boyfriend, Justin Solondz, at the time is a  
6 fugitive.

7 The two remaining people who knew about this, who were  
8 there, are Jennifer Kolar and Lacey Phyllabaum, and the  
9 Government called them, and they testified to you and they  
10 told you what happened, and they identified the Defendant as  
11 one of the people who was there with them.

12 Mr. Meyerhoff is available to both sides. If the  
13 Defendant actually thinks that he would exculpate her, that he  
14 has important evidence that would prove that she was not  
15 involved in this, the defense is free to call him. The  
16 Government has no lock on him. The Government called the  
17 witnesses who were there, who committed the arson at the  
18 University of Washington with the Defendant.

19 Mr. Bloom talked about Sarah Wald. He asked why the  
20 Government didn't cross-examine Sarah Wald. Sarah Wald, if  
21 you remember, is the witness who said that she had been at a  
22 meeting in Portland in early February of 2001, and that both  
23 the Defendant and Lacey Phyllabaum had been there, and the  
24 implication is well, they were both there so they must have  
25 met there, and so Lacey Phyllabaum is lying when she says that

1 she met the Defendant on May 12, 2001 at a Denny's restaurant  
2 in Olympia.

3 If you remember, it was Ms. Wald's testimony that there  
4 were 20 to 30 people at that meeting. Lacey Phillabaum was a  
5 leader at the meeting, a facilitator; she was someone quite  
6 visible to other people. There was no similar testimony about  
7 the Defendant. There was testimony that she played the fiddle  
8 that night. There wasn't any testimony that Lacey Phillabaum  
9 was around at that point, that Lacey Phillabaum was there for  
10 the evening, or anything like that.

11 So the only thing that Sarah Wald tells you, the only fact  
12 that you can take from her testimony, is that she was at a  
13 meeting in Portland attended by 20 to 30 people several months  
14 before the episode, the incidence of May 2001, and that Lacey  
15 Phillabaum and the Defendant were both there.

16 She didn't provide testimony about them having any  
17 contact, about seeing any contact, about seeing any  
18 conversation. Even if both of them were there, there's no  
19 reason to think that Lacey Phillabaum would necessarily  
20 remember that. Lacey Phillabaum could easily be at a meeting  
21 with 30 people and not recall it. So for her, when she meets  
22 the Defendant at a restaurant with five people in preparation  
23 for the arson several months later, she believes she's meeting  
24 her for the first time. The Government didn't cross-examine  
25 Sarah Wald because nothing about what she had said disproved

1 in any way what Lacey Phillabaum told you.

2 You heard a lot about Lacey Phillabaum. Mr. Bloom -- it  
3 ranged from -- it ranged all across the spectrum. Mr. Bloom  
4 made a big point again about how Lacey Phillabaum was dressed  
5 when she came here, that it was all an act, that she wanted to  
6 wear street clothes, and the Government said no, don't do  
7 that, we want you to look pathetic, we want you to look  
8 sympathetic to elicit sympathy from the jury.

9 Lacey Phillabaum addressed that when she was on the stand.  
10 She said she had asked to wear street clothes and that she had  
11 been told, you are in prison, you should look like you are.  
12 If you try to look somehow different, you are trying to fool  
13 the jury. There was no attempt to elicit sympathy, there was  
14 no attempt to do anything improper. She was told to appear --  
15 she was encouraged to appear as she was. If she were out of  
16 prison like Jennifer Kolar, she would have worn street  
17 clothes.

18 Mr. Bloom said that Lacey Phillabaum had admitted having  
19 sex with Justin Solondz, or basically admitted having sex with  
20 Justin Solondz. I think if you recall the testimony -- and  
21 what Mr. Bloom and I say about it really isn't the test, your  
22 memory is the test -- you won't find that Lacey Phillabaum  
23 basically admitted that. You will find that Lacey Phillabaum  
24 said she was in Justin's cabin/home, which is a very small  
25 home, very briefly. She denied having sex.

1       As she continued to be raked over the coals -- as  
2 Mr. Bloom continued to question her, to ask the same thing  
3 again and again to suggest that she had done this and crossed  
4 the line, she snapped back at one point, but she never  
5 admitted having sex with Justin Solondz, and to suggest that  
6 she did, or that she basically did, mischaracterizes what she  
7 said in this courtroom.

8       On a similar point, Mr. Bloom said Robert Corrina said his  
9 wife used the rental car to take him to work that week.  
10 Again, that mischaracterizes what the evidence was in this  
11 case. Mr. Bloom suggested that. He suggested it with his  
12 question. But Mr. Corrina's answer was not that she used the  
13 car to take him to work that week. They had rented a car the  
14 year before for Christmas, and he referred to that as possibly  
15 a car in which that had happened.

16       So Mr. Bloom's question:

17               "Question: In fact, there came a time when you had  
18 that car, that Kara took you to work in that car, on one  
19 particular day; isn't that true?"

20               "Answer: I don't remember.

21               "Question: Do you remember in reconstructing the  
22 events with your wife that she reminded you that she took you  
23 to work in that car one day?"

24               "Answer: We couldn't figure out if that was the car  
25 or if it was a car that we had rented for Christmas vacation."

1       So again, the description you've heard of the evidence is  
2 not what the evidence was. Mr. Corrina did not say he'd been  
3 taken to work in that car or that he had gone to work in that  
4 car. Mr. Corrina's testimony was that he was home that day.  
5 He didn't recall why, but that he was home that day.

6       Mr. Bloom talked a little about the Conger house, and he  
7 referred to the testimony of Haila Silvertrees -- that's  
8 Ocean's Mother -- and of Heather Moore, and he suggested that  
9 their testimony showed that what Lacey Phillabaum had said  
10 about seeing the Defendant playing the violin in the kitchen  
11 one day, that that couldn't be true, and if you look back at  
12 the testimony you will see that that's not the case either.

13       Each of them did describe some work in the kitchen over  
14 the course of several months, but neither of them was clear  
15 about when precisely that work took place. Neither of them  
16 suggested that it was tremendously extensive work. Heather  
17 Moore, I believe, talked about replacing a countertop.

18       There's nothing in what either of them said that shows the  
19 Defendant could not have been playing the violin in the  
20 kitchen on the weekend in which Lacey Phillabaum was at the  
21 house.

22       Mr. Bloom talked about a check to Bill Wake. He said, why  
23 are they showing you that? What are they trying to hint at?  
24 What improper purpose are they pursuing? If you remember,  
25 Mr. Wake is Justin Solondz' landlord, and one of the pieces of



1 evidence that you have is a check written by Briana Waters to  
2 him to pay the rent for Justin Solondz.

3 The Government is not trying to show anything improper by  
4 doing that. The check is relevant in two ways. One,  
5 Mr. Wake's memory of exactly when Justin Solondz rented that  
6 cabin from him is not precise. He says it was for a period of  
7 several months. When he sees the check, he knows that's the  
8 time. So the check establishes when the rental took place.  
9 It also shows some connection between the Defendant and Justin  
10 Solondz. There's nothing improper about that. The Government  
11 is not suggesting anything more sinister than the fact that  
12 this is one more piece of evidence of a connection between the  
13 two of them.

14 One of the most astounding things we heard was the  
15 suggestion that the Government already had the Ralph's  
16 Thriftway record. If you remember, Mr. Bloom said he thought  
17 the Government had it, and the evidence is exactly to the  
18 contrary.

19 Agent Halla was asked about that. He explained all the  
20 steps that he went to with Ralph's to try to gather records,  
21 about getting old data tapes for an obsolete system and going  
22 to considerable effort to get data pulled off of those to find  
23 out everything possible from Ralph's, and that he had failed  
24 to do that and that he had not seen this record before trial.

25 Mr. Bloom's evidence to the contrary, the basis for his

1 claim that the Government had this record, is apparently the  
2 fact that at one point in the question I referred to -- in a  
3 question to Ms. Philabaum, I referred to her driving to  
4 Seattle during the evening of May 20th, and six or seven  
5 questions later I used the word "night." Somehow this is  
6 evidence that the Government had this record, that we hid this  
7 record, that we knowingly concealed it for some purpose.

8 Ladies and Gentlemen, I talked a moment ago about the car  
9 rental and how important that is as corroborating physical  
10 evidence in this case. Every aspect of that rental provides  
11 evidence that corroborates the testimony that you've heard  
12 from Jennifer Kolar and Lacey Philabaum and from Robert  
13 Corrina: the timeframe, the mileage, the payment, the  
14 subsequent bank records.

15 The car is rented midday on May 18th, a Saturday,  
16 approximately a day before the arson. You saw records in this  
17 case on cross-examination -- I am sorry, it's the 19th.

18 You saw records on cross-examination of what was done with  
19 the car on the first day or so. Mr. Corrina told you that  
20 they took it downtown, they went to get lunch at a local  
21 restaurant, probably did that again Sunday. He lives a few  
22 miles from downtown; we are probably talking about 20 or 30  
23 miles to go in and out of town a couple times.

24 Mr. Corrina didn't go anywhere else. He didn't take any  
25 trip. There's no charges on his credit card anywhere further

1 away than downtown Olympia, and his bank records which you  
2 have and his credit card statements will show you that he  
3 didn't have a tremendous amount of money. This is a \$200  
4 rental. He had no real purpose for the rental for himself,  
5 and he obviously doesn't take the car anywhere.

6 It may be a minor perk to him to be able to use it to  
7 drive downtown once, but it's not a rental that he's going to  
8 make for that purpose.

9 Mr. Corrina told you that the next day, Sunday, the  
10 Defendant showed up at his house, and she said that she felt  
11 ill and she needed to go to the hospital. She wanted to take  
12 the car, and that Justin Solondz was nearby and he would come  
13 and he could drive her to the hospital.

14 They left the house in the evening. You know from the  
15 testimony of Jennifer Kolar and the testimony of Lacey  
16 Philabaum what ended up happening with that car. You know  
17 from the testimony of Lacey Philabaum that they met the other  
18 people involved in the arson in Olympia, including William  
19 Rodgers.

20 The record that we have here is a record that shows that  
21 at 7:12, the Defendant stopped in the Ralph's Thriftway a  
22 couple blocks from Williams Rodgers' house and purchased  
23 approximately \$13 worth of something. I suggest to you that  
24 four people are about to drive up to Seattle; it's probably  
25 some soda and chips for the road.

1       The testimony concerning when they arrived in Seattle,  
2 Mr. Bloom referred to 8:00. Actually, Jennifer Kolar had  
3 initially estimated 8:00 or 9:00. On direct, she said the  
4 five of us who were involved met at the grill, probably around  
5 9:00 at night, 8:00 at night. On cross-examination, she was  
6 asked questions again about it, and she said approximately  
7 8:00.

8       But considered as a whole, her testimony suggests  
9 somewhere in the 8:00 to 9:00 region. Leaving Olympia at 7:12  
10 is entirely consistent with that. There's no reason to  
11 believe that that car went anywhere else, that it went to the  
12 dumpsters before it went to the Greenlake Bar & grill. If you  
13 leave Olympia at 7:12, according to the testimony you heard  
14 this morning, you'd be in Seattle at the Greenlake Bar &  
15 Grill, on a normal night, at 8:20.

16       You heard a lot of testimony suggesting that traffic was  
17 bad, there was road construction, things like that. Even if  
18 that slowed you up a few minutes, first, it's probably not  
19 something they planned on, they probably figured they'd be  
20 there around 8:20 and, second, nothing inconsistent was asked  
21 about planning to meet there at 9:00.

22       So that car rental record does nothing to show that the  
23 Defendant is not part of this conspiracy, that things did not  
24 happen in exactly the way Jennifer Kolar and Lacey Philabaum  
25 said it happened.

1 I submit to you that the real proof is what happened with  
2 that car rental record, because although the Government didn't  
3 have it before trial, the defense did. If what we were  
4 talking about is a plane ticket to New York, proof that the  
5 Defendant was in New York, don't you think they would have  
6 called us a minute after they got it and said: "We've got the  
7 proof our client is innocent. We don't need to have a trial."

8 But what actually happened with it is, the defense waited  
9 and sprung it at trial in an attempt to somehow ambush one of  
10 the witnesses to find something inconsistent. The fact that  
11 that record was not presented when it was found is the  
12 clearest proof that it is not in any way evidence that the  
13 Defendant is innocent. It's entirely consistent with her  
14 being guilty.

15 In addition to the time records, the mileage on this car  
16 also fits exactly what it should. Mr. Corrina probably used  
17 approximately 30 miles just going downtown and back. I think  
18 his testimony was that it was about 9 miles from his house to  
19 downtown. That may be incorrect.

20 The round-trip to Seattle is approximately 130 miles. If  
21 you add in a round-trip from there to the University, probably  
22 two round-trips if one is to stash equipment after the initial  
23 trip up to the Greenlake Bar & Grill, you would end up very  
24 near the mileage that we have, just over 200 miles.

25 The payment also shows that what you've heard about that

1 car is what happened with it. Justin Solondz -- if you look  
2 at his bank records -- and Mr. Bartlett showed you those  
3 earlier -- there was a \$200 cash withdrawal on May 19th --

4 MR. BLOOM: Excuse me, it is not in evidence.

5 MR. BARTLETT: It is in evidence.

6 MR. FRIEDMAN: Thank you, Your Honor.

7 MR. BLOOM: I am mistaken then. I am sorry.

8 MR. FRIEDMAN: If you look at the bank records, you  
9 will see a \$200 cash withdrawal that morning. The rental  
10 charge is \$187.87. So that \$200 cash withdrawal matches  
11 almost perfectly. The other interesting thing is, if you look  
12 at Justin Solondz' bank records, \$200 isn't a normal amount  
13 for him. That's the first time that year that he's withdrawn  
14 \$200. \$200 is exactly the amount of money that gets deposited  
15 into Mr. Corrina's bank account a week later.

16 So Justin Solondz is pulling out \$200 to cover the cost of  
17 the car rental. Either he or the Defendant give it to  
18 Mr. Corrina. A few days later, Mr. Corrina makes it to the  
19 bank and deposits the money. Financial records show that that  
20 is why Mr. Corrina rented this car.

21 He didn't have the money to be splurging on a car for no  
22 real purpose, for himself. He's being paid for the car, to  
23 cover the cost of the car rental, because that rental is not  
24 for him; it's for someone else. As he tells you, it's for the  
25 Defendant, and it's a car that she took that night, and she

1 took it to commit the arson at the University of Washington.

2 Over the last couple of days, Ladies and Gentlemen, we  
3 heard from a number of witnesses who came in and talked to you  
4 about the Defendant's character -- her character for  
5 nonviolence -- and they said a number of other things about  
6 her, generally very complimentary. The Government -- that's  
7 important evidence, as Mr. Bartlett said.

8 Obviously, you will consider that. But none of the  
9 evidence that you heard from the Defendants involved facts  
10 that showed or tended to show the Defendant was innocent of  
11 this crime. There was no factual evidence that rebutted or  
12 undercut the Government's case, the Government's evidence.

13 One thing that was interesting about that evidence is how  
14 similar it showed the Defendant was to Lacey Phyllabaum. You  
15 heard a lot of evidence about Watch, about being a peaceful  
16 activist. If you think back to Lacey Phyllabaum's testimony,  
17 she told you that she spent years working for Oregon Tilth,  
18 which is an organic certification organization. Basically,  
19 pro environmental work and peaceful and good work.

20 Both of them moved from there or became involved in  
21 actions a little less innocent. Lacey Phyllabaum told you  
22 about a plan to take over Cargill's offices as part of an  
23 environmental protest, and you've heard the evidence about  
24 what happened at the Watch campaign, how people working on  
25 that campaign came up to Seattle and basically invaded Plum

1 Creek's offices.

2 Lacey Phillabaum told you that she was involved in WTO.  
3 You know the Defendant was involved in that because you heard  
4 from the professor who talked about the fact that that  
5 interfered with her progress on her documentary.

6 Lacey Phillabaum told you about being invited to the book  
7 club and how she was basically recruited through there by  
8 William Rodgers. The Defendant wasn't at the book clubs  
9 because she had a close direct relationship with William  
10 Rodgers; he just recruited her directly.

11 Lacey Phillabaum told you that it took her six years to  
12 cross the line, to go from being a peaceful, non-violent  
13 activist to finally committing that arson.

14 There's one big difference, though, because Lacey  
15 Phillabaum has accepted responsibility for what she's done.  
16 After seeing her testimony, clearly she feels tremendous  
17 remorse. She's doing what she can to make the situation  
18 better.

19 She talked from the stand, and you saw the quote earlier  
20 about the fact that her main motivation is what she feels is  
21 her moral obligation to the researchers, to try and make up to  
22 the people she hurt by her actions.

23 The Defendant is exactly the opposite. When she took the  
24 stand, she told you a lot of things that just don't mesh; a  
25 lot of things that just aren't true. She told you about the



1 New York Times quote. She didn't deny that she said that.  
2 She said she never would have meant anything like that. She  
3 told you she hadn't seen the article when it came out. That  
4 doesn't make any sense. If you are in the New York Times,  
5 particularly if you are in the New York Times and you are  
6 young, you'd remember that.

7 Tiffany Tudder knew about it. She told you about how she  
8 found out about the article. Do you think Tiffany Tudder  
9 didn't have a copy of it and showed it to the Defendant? The  
10 Defendant said she was close to William Rodgers, and we've  
11 heard a lot of talk about these phone calls and oh, it's just  
12 an average of one a week.

13 If you look at that list, first, they are not spread over  
14 a year. The calls are over a space of approximately three or  
15 four months, so we are talking about several calls a week.  
16 But second and more important, the Defendant is the person  
17 Williams Rodgers is calling the most often, the person who is  
18 the closest to him.

19 The Defendant supposedly is passionate about environmental  
20 activism, and you know that William Rodgers is. This is  
21 William Rodgers' focus. Yet, the Defendant would have you  
22 believe they didn't talk about that.

23 The Ralph's purchases. The Defendant went to Ralph's and  
24 made point of sale purchases four times in 2001, all of them  
25 within a space of four days, from May 17th to May 21st; four

1 times in the whole year.

2 Initially, when she was asked about it, she said that she  
3 was there all the time, she babysits for someone near there,  
4 there is band practice, and stuff like that. She looked at  
5 the records; there's no other point of sale purchases all  
6 year. The reason the Defendant is there that week is she's  
7 working closely with William Rodgers, preparing for the arson.

8 Finally, the folder with the document, Exhibit 614. The  
9 Defendant would have you believe that she gave a manila folder  
10 to Jennifer Kolar, that she wrote a note on it saying here's  
11 some articles to read, and there is a stack of articles in  
12 there. Those aren't the articles that she gave Jennifer  
13 Kolar. She gave an entirely different set of articles on, I  
14 believe it was, women activism; and at some point Jennifer  
15 Kolar must have pulled those articles out and subbed in a  
16 different set of articles, the anarchy articles, and put them  
17 in the folder -- although Jennifer Kolar told you that's not  
18 what happened -- and somehow Jennifer Kolar had a set of  
19 articles to sub in that had Justin Solondz' fingerprints all  
20 over them. Jennifer Kolar told you she doesn't even know  
21 Justin Solondz -- or she barely knows Justin Solondz.

22 Does that story make any sense?

23 The reason the Defendant is lying to you about these  
24 things is she knows that this evidence is significant. It's  
25 important. So she lied to you about each of those pieces of

1 information.

2 She did it in a way that was very carefully planned and  
3 carefully crafted. Remember, Jennifer Kolar had initially not  
4 read the articles. She basically took the set of articles and  
5 put it in a tub somewhere. Jennifer Kolar apparently thought  
6 they were about women activism. It wasn't until preparing for  
7 trial that Mr. Bartlett asked her to read the articles, that  
8 she read them and found out that's not what they were.

9 Let me put it to you -- have you ever heard the phrase  
10 women activism, or articles about women activism? The reason  
11 the Defendant says these are articles about women activism is  
12 that she's read a report of Jennifer Kolar's interview where  
13 Jennifer Kolar said articles about women activism, so in  
14 tailoring her story, she picked that phrase.

15 It's a phrase you never would come up with if you weren't  
16 trying to tailor your story to fit the facts; to minimize, to  
17 escape, but to fit the little pieces that you can.

18 The Defendant hasn't just lied to you herself. She hasn't  
19 just denied blame herself or refused to accept responsibility.  
20 She's attacked each of the people -- each of the important  
21 witnesses who have testified against her in this case.

22 Lacey Phyllabaum -- she has accused Lacey Phyllabaum of  
23 being an unprincipled slut. You've seen cross-examination  
24 about Lacey Phyllabaum's sex life, about her supposed preying  
25 on men or stealing other women's men.

1 Jennifer Kolar. Jennifer Kolar was outed on the stand.

2 And Robert Corrina, the cousin who initially tried to  
3 protect her. Robert Corrina, you hear, is making up stories  
4 and she doesn't know why he'd make up stories.

5 Ladies and gentlemen, there is no evidence to support what  
6 the Defendant has said about Jennifer Kolar, about Lacey  
7 Philabaum, or about Robert Corrina, except the Defendant's  
8 own words.

9 For Jennifer Kolar, there's no collection of love letters,  
10 no collection of e-mails. Even the one gift, the necklace,  
11 which she supposedly returned. Nothing but her word to say  
12 that Jennifer Kolar professed her love for her and the  
13 Defendant turned her down, and that's why Jennifer Kolar is  
14 bitter.

15 Justin Solondz -- he's not around to say he had an affair  
16 with Lacey Philabaum. All you have is the Defendant's word  
17 that Justin Solondz admitted to her that he had such an affair  
18 and then the Defendant's claim that she confronted Lacey  
19 Philabaum about that. There is absolutely nothing to  
20 corroborate -- not a piece of physical evidence to corroborate  
21 what the Defendant has told you about these women.

22 Briana Waters may not look like what you expected when you  
23 got your jury summons, when you first came into the room --  
24 didn't know anything about the case except that it was  
25 probably a criminal case. She may not look like what you

1 thought a criminal defendant would look like, but as  
2 Mr. Bartlett said, we are a nation of laws and one of the  
3 basic principles is that everyone is treated the same, whether  
4 they look sympathetic, whether they look unsympathetic.

5 You took an oath to do that, and I know you will follow  
6 that oath. The evidence in this case has shown beyond any  
7 doubt that the Defendant participated in this conspiracy, that  
8 the Defendant was one of the people who went to the University  
9 of Washington, the Center for Urban Horticulture, on May 21st  
10 of 2001 and burned that building down.

11 I'd ask you to return a verdict consistent with that  
12 evidence, a verdict finding the Defendant guilty of  
13 conspiracy, guilty of arson, guilty of the crimes with which  
14 she is charged.

15 Thank you.

16 THE COURT: All right. Now I am going to eliminate  
17 two of you, as I indicated. I will have the clerk now put the  
18 names in the wheel and she will draw out two. Those two will  
19 be excused.

20 When you are excused, of course, you won't be part of the  
21 deliberations but you will still be part of this jury, which  
22 means that you are not to talk about this case or do anything  
23 about it until after this matter is over with.

24 I never know if I may need you because something may  
25 happen or any other reason. So the same admonitions you've

1 been given during the course of this trial, you will be held  
2 to that standard.

3 All right.

4 THE CLERK: Tera Hammermeister and Sean Thompson may  
5 be excused.

6 THE COURT: All right. Are there any instructions  
7 for them as they go through to pick up their belongings and to  
8 the clerk's office?

9 THE CLERK: There's two certificates on the table,  
10 and leave their badges.

11 THE COURT: Steve, let me know when they have  
12 cleared.

13 Of course, you 12 will be the ones that will deliberate  
14 and decide the case.

15 The hour now is 6:00, and so the same admonition that I  
16 have been giving you throughout this trial will be in place as  
17 you go about your evening. You are not to discuss the case in  
18 any way until all 12 of you are in that jury room together.

19 Now I have to treat you like sheep. You all have to do  
20 things together, smoke together, stand around together and do  
21 what you do. That will be the system until you decide the  
22 case.

23 Now, all of the exhibits will be brought into the jury  
24 room, along with the instructions that I gave you. All of  
25 that before you start.

1        Now, you can do it this way. You can tell me -- I know I  
2 kept you here later than I normally do. In terms of reporting  
3 back to the jury room, are you able to report back at 9:00 to  
4 begin? All right. Then I will have you report to the jury  
5 room at 9:00.

6        All of these items that I have talked about -- and when  
7 they have been cleared with the attorneys -- they will be  
8 there waiting on you. You are not to start any discussion,  
9 anything about this case, until all 12 of you are in that  
10 room. You will each know what the other person is doing, what  
11 you are talking about, and that's how you will make your  
12 decision.

13        So I will have you then excused, as you go through the  
14 jury room and report at 9:00 to begin deliberations.

15        You can take your tablets now, but leave the tablets in  
16 the jury room until you come to pick them up tomorrow.

17        (Jury departed at 6:00 p.m.)

18        THE COURT: All right. We will recess this matter.

19        What I want you to do, the attorneys, is to come and make  
20 sure that everything that goes into that jury room has been  
21 approved and admitted and all of that. I want the two of you  
22 to have that responsibility. If there's any dispute about it,  
23 we'll deal with that.

24        MR. FOX: Your Honor, I know it's very late. I have  
25 one matter very briefly that I would like to put on the

1 record.

2 THE COURT: All right. You may be seated.

3 MR. FOX: Two things. With regard to Justin Solondz'  
4 bank account records, where there was an objection in the  
5 course of testimony, my records that I got -- the Government's  
6 Amended Exhibit List from the clerk -- shows that Exhibit 745,  
7 which is statements of the bank account belonging to Justin  
8 Solondz, was never admitted into evidence. Maybe I am wrong.

9 MR. BARTLETT: I checked the record last night, and I  
10 had it as admitted.

11 THE COURT: Let me find out what we are talking  
12 about.

13 THE CLERK: We have a stipulation for the records.

14 MR. FOX: Well, there was a stipulation with regard  
15 to the custodian of records, that we would not require the  
16 custodian to come in, but I don't believe that these records  
17 were ever offered or admitted.

18 THE COURT: Do what I ask you to do. Come over with  
19 her and let's go through it, and we'll find out. You talked  
20 about everything that's been reserved on --

21 MR. FOX: Well, I guess the reason why there was the  
22 objection is that these were not records that were admitted  
23 into evidence.

24 THE COURT: The question is: Are they admitted as an  
25 exhibit -- admitted or not?



1 MR. FOX: They are not.

2 THE COURT: Then come over and check it through with  
3 the clerk, and we will find out. If I have to deal with it, I  
4 will deal with it. That's what I am asking you to do, to come  
5 here and determine what should be going to this jury.

6 MR. FOX: Sure. I just want to put on the record the  
7 reason for our objection is that we didn't see that on the  
8 clerk's list.

9 The other thing, Your Honor, I would move for a mistrial  
10 based on the rebuttal argument of Mr. Friedman, because he  
11 started out basically by saying that to find Ms. Waters  
12 innocent, you have to find these five people were lying, and  
13 that is not the standard.

14 The jury doesn't have to find anyone is lying. They have  
15 to find that there's reasonable doubt that what they say is  
16 true, and there are cases that have reversed convictions where  
17 that precise argument has been made.

18 THE COURT: Well, you make the record, but I am  
19 denying the motion. The jury will decide the case. You have  
20 made your record.

21 MR. FOX: Okay.

22 THE COURT: And then the two of you come and deal  
23 with that exhibit. I will be in recess, but I will be close  
24 by if --

25 MR. BLOOM: Your Honor, 10 seconds. I think we may

1 have some other objections, but they can wait until the  
2 morning.

3 THE COURT: All right. I can meet you here at 8:30  
4 like usual.

5 MR. BLOOM: 9:00 would work. I think it will just  
6 take a moment.

7 (The Court recessed to Friday, February 29, 2008, at  
8 the hour of 9:00 a.m.)

9 \* \* \* \* \*

10 C E R T I F I C A T E

11

12 I certify that the foregoing is a correct transcript from  
13 the record of proceedings in the above-entitled matter.

14

15 /S/ Teri Hendrix

May 5, 2008

16 Teri Hendrix, Court Reporter

Date

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